

CHAPTER 272.

EXECUTIONS.

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272.01 Judgments enforced. The owner of a judgment may enforce the same in the manner provided by law. [1935 c. 541 s. 218]

272.02 Judgments, enforced by execution. A judgment which requires the payment of money or the delivery of property may be enforced in those respects by execution. Where it requires the performance of any other act a certified copy of the judgment may be served upon the party, person or officer who is required to obey the same, and if he refuse he may be punished for contempt, and his obedience enforced. [1935 c. 541 s. 219]

Note: A provision in a money judgment that execution shall issue is surplusage as an execution follows as a matter of course. *Sharpe v. First Nat. Bank of Antigo*, 220 W 506, 264 NW 245.

272.03 Executions, kinds. There are three kinds of executions: One against the property of the judgment debtor, another against his person, and the third for the delivery of property, or such delivery with damages for withholding the same. They are the process of the court, and shall be as prescribed by section 272.05. [1935 c. 541 s. 220]

272.04 Execution, when issued. (1) Upon any judgment of a court of record perfected as specified in section 270.66 or any judgment of any other court docketed in a court of record, execution may issue at any time within five years after the rendition thereof, and when an execution shall have been so issued and returned unsatisfied in whole or in part other executions may issue at any time. But if no execution was issued within said five years it shall issue only upon leave of the court or a judge when the sum still due on the judgment shall be made to appear by the affidavit of the owner, his agent or attorney; but no execution shall issue or any proceedings be had upon any judgment after twenty years from the rendition thereof.

(2) When the sheriff holds an execution against property any person indebted to the judgment debtor may pay to the sheriff the amount of his debt not exempt from execution or so much thereof as shall be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid. [1935 c. 541 s. 221, 266]

272.05 Execution, how issued; contents. The execution must be issued from and be sealed with the seal of the court and signed by the clerk where the judgment roll, or a certified copy thereof, or the transcript of the justice's judgment is filed, directed to the sheriff, or coroner when the sheriff is a party or interested, countersigned by the owner or his attorney, and must intelligibly refer to the judgment, stating the court, the county where

the judgment roll or a certified copy thereof or such transcript is filed, the names of the parties, the amount of the judgment, if it be for money, and the amount due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer, substantially as follows:

(1) If it be against the property of the judgment debtor, to satisfy the judgment out of the personal property of such debtor, and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county or at any time thereafter.

(2) If real estate shall have been attached and judgment rendered for the plaintiff, the execution may also direct a sale of the interest which the defendant had in such real estate at the time it was attached or at any time thereafter.

(3) If upon a judgment to enforce a lien upon specific property, to sell the interest which the defendant had in such property at the time such lien attached.

(4) If it be against property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, to satisfy the judgment out of such property.

(5) If it be against the person of the judgment debtor, to arrest him and commit him to the county jail until he shall pay the judgment or be discharged according to law.

(6) If it be for the delivery of property, to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may require the officer to satisfy any costs, damages or rents and profits covered by the judgment out of the personal property of the party against whom it was rendered, and shall specify the value of the property for which the judgment was recovered; if a delivery of the property cannot be had and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed or at any time thereafter. When a judgment in replevin or upon appeal from a justice's judgment shall be entered against the principal and also against his sureties as provided in sections 270.60 or 306.20, the execution shall direct that the property of the surety shall not be levied on unless the property found, belonging to the principal, is not sufficient to satisfy the judgment.

(7) When the judgment is not all due the execution may issue for the collection of such instalments as have become due, and shall direct the sheriff to collect the amount then due, with interest and costs, stating the amount of each; the judgment shall remain as security for the instalments thereafter to become due and whenever any further instalments shall become due execution may in like manner be issued for their collection.

(8) Every execution upon a judgment for the recovery of money may direct the collection of interest on the amount recovered from the date of the rendition thereof until paid. [1935 c. 541 s. 223]

Revisor's Note, 1935: The execution should be signed by the clerk of the court, not "subscribed by the party". The execution is a "court process" (272.03, see 256.35, blank process) and like other writs should issue from and by the court. It does in most states. (6) The direction to first exhaust the property of the "principal" should be on the face not the back of the execution. (Bill No. 50 S, s. 222)

Contract for working farm, under which, among other things, landowner furnished cattle and parties were to divide all produce and stock when sold, and landowner was to determine which cattle should be sold, constituted cropper's contract, not lease; and

grain grown on farm was therefore not subject to levy by judgment creditor of cropper before division. *Atwood v. Freund*, 219 W 358, 263 NW 180.

A claim of a patient, based on a judgment for malpractice against a physician, based on a complaint alleging that the physician had acted "carelessly," "recklessly" and "wantonly" and in effect charging no more than that the patient had opposed his judgment to that of the physician, was barred by the physician's discharge in bankruptcy, since the claim was not one for "wilful and malicious injuries." *Schacht v. Bonacci*, 220 W 53, 264 NW 625.

272.06 Execution, when returnable. Every execution shall be made returnable, within sixty days after its receipt by the officer, to the clerk of the court from which it issued but if the officer has levied upon property previous to the expiration of said sixty days he may retain such execution until he has sold the property. The officer shall state in his return how he executed the writ. [1935 c. 541 s. 223]

272.07 To what county issued. When the execution is against the property of the judgment debtor it may be issued to the sheriff of any county where the judgment is docketed. When it requires the delivery of real or personal property it must be issued to the sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

272.08 Sheriff to indorse date of receipt. Upon receipt of any execution the sheriff or other officer shall indorse thereon the year, month, day and hour of the day when he received the same.

272.09 Execution against debtor's person. If the action be one in which the defendant might have been arrested, as provided in chapter 264, an execution against the person of the judgment debtor may be issued after the return of an execution against his property unsatisfied in whole or in part; but if the defendant be imprisoned on execution

in another action, or upon mesne process in the same action, an execution may issue against his body without any previous execution against his property. [1931 c. 89]

Revisor's Note, 1931: "Any county within the jurisdiction of the court" where applied to either a circuit court or to a justice court means simply that the general rule which limits the territorial scope of an execution applies here. One who has been "surrendered" by his bailor is in jail usually, and that situation is covered by the preceding phrase. Execution can issue only "in the cases allowed by law." That is implied. (Bill No. 128 S, s. 1)

272.10 Execution against body only remedy, exception. When a party shall have been arrested on an execution no other execution upon the same judgment can be issued against him or his property except as provided by section 336.10; but if he shall escape he may be retaken by a new execution against his body or an execution against his property may be issued in the same manner as if he had never been arrested on execution. [1931 c. 89]

Revisor's Note, 1931: The "cases specially provided by law" are thought to be those which fall within 336.10. Hence the amendment to make specific reference. As the statutes now read it is very difficult to know for certain what the law is. You are never absolutely sure that you have found all the "cases specially provided by law." The law is not changed. (Bill No. 128 S, s. 2)

272.11 [Repealed by 1935 c. 541 s. 224]

272.12 Execution; death of person arrested. If any person arrested on execution shall die while under arrest a new execution may issue against his property in the same manner as if he had never been arrested; but such new execution shall not be levied upon any real estate which the deceased shall have sold in good faith nor upon any real estate which shall have been sold under any other judgment against him. [1935 c. 541 s. 225]

272.13 Execution against sheriff. Whenever a judgment shall be recovered in any court of record against the sheriff instead of directing the execution thereon to the coroner of the county it may be directed and delivered to any person (except a party in interest) designated by order of the court; and such person shall perform the duties of a sheriff and be liable in all respects to all the provisions of law respecting sheriffs, as far as the same may be applicable. [1935 c. 541 s. 226]

272.14 Execution after debtor's death. After the expiration of one year from the death of a judgment debtor execution may be issued against any property upon which the judgment is a lien and may be executed in the same manner and with the same effect as if he were still living; but no such execution shall issue except upon an order, made upon sufficient cause shown. If such judgment be against such deceased debtor and others jointly execution may issue against surviving judgment debtors without delay. [1935 c. 541 s. 227]

Note: Where a proper case existed for the issuance of an execution under this section, the circuit court was without authority to impose a condition that the execution issue against certain property only and that the full amount of the judgment be bid for such property in case the owner of the judgment should bid. State ex rel. Rasmussen v. Circuit Court, 222 W 628, 269 NW 265.

Mere docketing of judgment against joint tenant did not effect severance of tenant's interest, and where no execution was issued until after death of such tenant, surviving tenant became sole owner, and no interest of deceased tenant remained upon which execution could be levied. Musa v. Segelke & Kohlhaus Co., 224 W 432, 272 NW 657.

272.15 Execution after judgment creditor's death. If the judgment creditor dies before satisfaction of the judgment an execution may be issued by his attorney of record in the name of such decedent or in the name of his executor or administrator. Before an execution shall issue in the name of an executor or administrator he shall file with the clerk a copy of his letters testamentary or of administration, and the clerk shall attach such papers to the judgment roll and enter at the foot of the judgment, in the judgment book, the fact of the death of such creditor, the name and date of appointment of such executor or administrator. The moneys collected thereon shall be paid to the executors or administrators of such creditor; but if there be none then the moneys so collected shall be paid to the clerk of the court. [1935 c. 541 s. 228]

272.16 [Renumbered section 272.15 by 1935 c. 541 s. 228]

272.17 Execution; who acts on sheriff's death or removal. If any sheriff shall die or be removed from office before the execution be returned, his undersheriff or deputy shall proceed thereon in the same manner as the sheriff might have done. [1935 c. 541 s. 229]

272.18 Property exempt from execution. No property hereinafter mentioned shall be liable to seizure or sale on execution or on any provisional or final process issued from any court or any proceedings in aid thereof, except as otherwise specially provided in the statutes:

(1) BIBLE. The family Bible.

(2) PICTURES AND BOOKS. Family pictures and school books.

(3) LIBRARY. The library of the debtor and every part thereof; but this provision shall not be deemed to extend to circulating libraries.

- (4) PEW. A seat or pew in any house or place of public worship.
- (5) WEARING APPAREL, HOUSEHOLD GOODS AND FIREARMS. All wearing apparel of the debtor and his family; all beds, bedsteads and bedding kept and used for the debtor and his family; all stoves and appendages put up or kept for the use of the debtor and his family; all cooking utensils and all other household furniture not herein enumerated, not exceeding two hundred dollars in value; and one gun, rifle or other firearm, not exceeding fifty dollars in value.
- (6) LIVE STOCK, FARM IMPLEMENTS AND AUTOMOBILE. Eight cows, ten swine, fifty chickens, two horses or two mules, any automobile used or kept for the purpose of carrying on the debtor's trade or business, not exceeding four hundred dollars in value, ten sheep, and the wool from the same, either in the raw material or manufactured into yarn or cloth; the necessary food for all the stock mentioned in this section for one year's support, either provided or growing or both, as the debtor may choose; also one wagon, cart or dray, one sleigh, one plow, one drag, one binder, one corn binder, one mower, one spring-tooth harrow, one disc harrow, one seeder, one hay loader, one corn planter, one set of heavy harness and other farming utensils, also small tools and implements, not exceeding three hundred dollars in value.
- (7) PROVISIONS. The provisions for the debtor and his family necessary for one year's support, either provided or growing, or both, and fuel necessary for one year.
- (8) TOOLS FOR TRADE. The tools, implements and stock in trade of any mechanic, miner, merchant, trader or other person, used or kept for the purpose of carrying on his trade or business, not exceeding two hundred dollars in value.
- (9) SEWING MACHINE. All sewing machines owned by individuals and kept for the use of themselves or families.
- (10) KEEPSAKES. Any sword, plate, books or other articles presented or given to any person by congress, the legislature of either of the United States, or by either body of congress or of such legislature, whether presented by a vote or raised by subscription of the members of either of the aforesaid bodies.
- (11) PRINTING PRESS AND SUPPLIES. Printing materials and press or presses used in the business of any printer or publisher to an amount not exceeding fifteen hundred dollars in value; provided, that no sum exceeding four hundred dollars shall be exempt from execution for payment of wages of laborers or servants for services rendered the defendant.
- (12) ACCOUTREMENTS. The uniform, arms and equipments of every member of the Wisconsin national guard, and all military property of any company, regiment or brigade thereof.
- (13) SUPPLIES FOR ABSTRACTS. All books, maps, plats and other papers kept or used by any person for the purpose of making abstracts of title to land.
- (14) PATENTS. The interest owned by any inventor in any invention secured to him by letters patent of the United States.
- (15) WAGES. Sixty per cent of the earnings of any person having a family dependent upon him for support at the time of the commencement of proceedings for the collection of debt, including the earnings of any minor child or children whose earnings contribute to the support of such family, but not less than sixty nor more than one hundred dollars for the month preceding the issue of any writ of attachment, execution, garnishment or the institution of proceedings supplementary to execution, and not less than one hundred eighty nor more than three hundred dollars for the preceding three months. An additional amount of ten dollars for such preceding month and thirty dollars for such preceding three months shall be allowed for each child under sixteen years of age dependent upon him for support. In computing the foregoing exemptions, the earnings for any month shall be considered reduced by the amount of any sum recovered during that month in any action mentioned in this subsection. The debtor shall not be entitled to the exemption under this subsection, unless it shall be shown that he is actually and reasonably contributing according to his means and circumstances to the support of said family. The garnishee shall recover costs when the property to be reached is exempt from execution against the principal debtor at the time of serving the process on the garnishee. All crops, live stock, dairy products and all other products grown or produced by a person to which his personal effort or that of his minor children has contributed, and all proceeds from the sale of such crops, live stock, dairy products, and other products shall be deemed earnings within the meaning of this subsection, but such definition of earnings shall not limit any other exemption provided by this section.
- (16) FIRE ENGINES AND EQUIPMENT. All fire engines, apparatus and equipments, including hose, hose carts and hooks and ladders, belonging to or which may hereafter belong to any town, city or village in this state, and which are or may be kept and used for the protection of property in such town, city or village from fire, together with the engine houses and hooks and ladder houses for the protection of the same, and the lot or lots on which such engine and hook and ladder houses may be situated, when owned by any such

town, city or village; and any lot or lots owned, used and occupied by any such town, city or village for corporate purposes.

(17) **FIRE INSURANCE.** All moneys arising from insurance of any property exempted from sale on execution, including the homestead, when such property has been destroyed by fire.

(18) **PRIVATE PROPERTY FROM EXECUTION AGAINST MUNICIPALITIES.** All private property shall be exempt from seizure and sale upon any execution or other process issued to enforce any judgment or decree of any court which shall have been rendered against any county, town, city, village or school district in this state.

(19) **LIFE INSURANCE.** If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life, in favor of a person other than himself, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; provided, that, subject to the statute of limitations, the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice, by or in behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount claimed; and all moneys or other benefit, charity, relief or aid to be paid, provided or rendered by any mutual beneficiary or fraternal corporation, society, order or association providing insurance on the assessment plan and authorized to do business in this state, shall be exempt against the creditors of a member thereof or of his beneficiary or beneficiaries to the amount of five thousand dollars in all cases where the insured pays the premiums or assessments or any part thereof; but if some other person pays such premiums or assessments the insurance shall be absolutely exempt.

(20) **CEMETERY LOTS.** Cemetery lots owned by individuals and all monuments therein, the coffins and other articles for the burial of any dead person, and the tombstone or monument for his grave by whomsoever purchased.

(21) **FIRE AND POLICE PENSION FUND.** All money paid or ordered to be paid to any member of any fire or police department or to the widow or guardian of the minor child or children of a deceased or retired member of any such department, which money has been paid or ordered to be paid to any such person as a pension on account of the service of any person in any such department in any city in this state whose population exceeds one hundred thousand.

(22) **BUILDING AND LOAN SHARES.** The shares held by a member of a local building and loan association as the same is defined in section 215.01, and the shares held by a member of a federal savings and loan association organized and existing under the laws of the United States, to the value of one thousand dollars at the time of the withdrawal thereof; but this subsection shall not apply to any person owning a homestead which is exempt.

(23) **LIBERTY BONDS, ETC.** All liberty bonds, thrift stamps, war savings stamps and victory notes, or either or any thereof, held by any person, to the value of two hundred dollars in the aggregate.

(24) **WAR PENSION.** All money received by a person, a resident of this state, as pension, compensation, government insurance, or adjusted compensation, back pension, compensation or insurance from the United States government on account of military or naval service, and all other money received by a person on account of military or naval service from the United States government administered by the veterans' administration, whether the same is in the actual possession of such person, on deposit, or loaned.

(25) **ACCIDENT INSURANCE.** All sums due or to become due and payable or paid to any person by any life insurance company or association or health and accident insurance company or association, for partial, total, temporary or permanent disability under any contract or policy of insurance, but not exceeding one hundred fifty dollars per month.

(26) **COUNTY FAIRS AND AGRICULTURAL SOCIETIES.** All sums paid as state aid under section 94.08 to county fairs and agricultural societies.

(30) **LIMITATIONS ON EXEMPTIONS.** The exemptions provided for in subsections (3), (6), (7), (8), (9), (11), (13), (14), (17), (19) and (22) of this section shall extend only to debtors having an actual residence in this state, and when such debtors and their families or any of them shall be removing from one place of residence to another, and those granted in subsections (5), (6), (11), (13), (14), (15), (17), (19) and (22) hereof shall

not be claimed as against an attachment or execution issued upon a judgment for the plaintiff in an action brought to recover compensation for any manual or domestic labor rendered or performed by any female in or about the dwelling of another. No property exempted by the provisions of this section shall be exempt from execution or attachment brought by any person for the recovery of the whole or any part of the purchase money of the same property. All articles so exempted may be selected by the debtor, his agent, clerk or legal representative, when necessary to distinguish the same; and if they shall fail or neglect to claim such exemption, the debtor's wife, unless she shall have deserted him, may, before sale, select the same and in her own name maintain an action for the recovery of the possession, or the value thereof, if the same shall have been taken away, provided the claim of exemption and selection have been made. [1931 c. 257; 1931 c. 425 s. 2; 1933 c. 69; 1935 c. 146, 385, 492; 1937 c. 398; 1939 c. 331; 43.08 (2)]

Note: For exemption on life insurances, see note to 246.09, citing *Cannon v. Lincoln Nat. L. Ins. Co.*, 208 W 452, 243 NW 320.

Garnishment is "provisional final process of court" within statute making money from insurance on burned property, which was exempt from execution, not subject to such process. *Cavadini v. Larson*, 211 W 200, 248 NW 209.

The exemption statute is construed as covering an automobile used in driving to and from a place of work by a laborer who, because of circumstances, is unable to reach his place of work without the aid of an automobile in order to pursue his work successfully. *Julius v. Druckrey*, 214 W 643, 254 NW 358.

While property or money is in custodia legis, the officer holding it is the mere hand of the court and his possession is the possession of the court and it is not subject to levy either in attachment or by way of execution. *Guardianship of Kohl*, 221 W 385, 266 NW 800.

An amendment to the statute increasing a debtor's exemptions does not apply in favor of a debtor whose obligations were incurred prior to the amendment. *Campbell v. Mickelson*, 227 W 429, 279 NW 73.

The proceeds of exempt property resulting from a voluntary sale thereof are not exempt in the absence of a statute providing for such exemption. *Gillett State Bank v. Knaack*, 229 W 179, 281 NW 913.

In (5) the words "all wearing apparel" include a wrist watch, an engagement ring, and a wedding ring, of the aggregate value of \$90, at least where such articles of the

modest value stated are not unsuitable to the circumstances of the debtor, and where no inference that the debtor was attempting to conceal her assets by investing in wearing apparel can be drawn. *Milwaukee A. Schools of Beauty Culture v. Patti*, 237 W 277, 296 NW 616.

One receiving salary of one hundred dollars per month is entitled to sixty dollars exemption for supporting his family and ten dollars extra for each child supported under sixteen years of age; person who supports three grandchildren besides his wife, is entitled to ninety dollars exemption per month. 20 Atty. Gen. 749.

Exemption under (15) cannot be claimed by two debtors on account of the same dependents. 21 Atty. Gen. 831.

Subsection (15) exempting sixty per cent of earnings, includes only gains from services or labor without aid of capital and does not contemplate moneys received for rent. 24 Atty. Gen. 574.

Fees of justice of peace are "earnings" within meaning of (15) and if within limits of statute may be exempt. 26 Atty. Gen. 238.

Under sec. 618, Title 38 USCA, proceeds of veterans' adjusted compensation certificate, while in form of money, are exempt from all judicial process aimed at subjecting said proceeds to claims of creditors and court can neither order guardian to cash certificate before maturity and apply proceeds in satisfaction of creditor's claim nor subject proceeds to payment of such claim after maturity of certificate. 28 Atty. Gen. 92.

272.19 Levy on personal property; appraisal. (1) Personal property shall be bound from the time it is seized. Whenever personal property shall be seized on attachment or execution and any part thereof shall be exempt therefrom and such exemption shall be claimed by the debtor or his wife, the officer making such seizure shall, upon request by either of them, or may upon his own motion, cause said exempt property to be appraised by two disinterested freeholders of the county, who shall first be sworn by him to make a true appraisal thereof, which appraisal shall be in writing, be signed by the appraisers and be prima facie evidence of the value of the property appraised. The appraisal, together with the true inventory of all the property seized, shall be returned with the writ. The fees of each of such appraisers shall be one dollar for each day engaged in such appraisal, and shall be paid by the officer and returned as a disbursement on his writ.

(2) If the property seized is an automobile used in carrying on the debtor's trade or business but is appraised and can be sold for more than four hundred dollars, the officer may sell such automobile and out of the proceeds of such sale he shall pay to the debtor or his wife the sum of four hundred dollars. The balance of the proceeds of such sale shall be applied on the execution or attachment. [1935 c. 541 s. 231]

Note: Where, after foreclosure sale of mortgaged chattels, the mortgage purchaser had a deficiency judgment entered and execution levied on the same chattels, which were subsequently within the five-day period redeemed by the mortgagor who assigned to plaintiffs, sheriff was without power to sell under the execution, and a demurrer to the complaint in an action to restrain the sale should have been overruled. *Whalen v. Finn*, 207 W 254, 240 NW 188.

Stock can be impounded in only three

ways, namely, by actual seizure, by surrender of the certificate to the corporation or by injunction against its transfer by the holder; unless so impounded an attachment of stock is invalid. Corporate stock, like other personal property, must be attached, if at all, where found. The uniform transfer act makes the method of transferring shares therein provided for effective regardless of transfer on the books of the corporation. *Bloch-Daneman Co. v. J. Mandelker & Son*, 205 W 641, 238 NW 831.

272.20 Homestead exemption definition. (1) A homestead selected by a resident owner not exceeding forty acres of land, when used for agricultural purposes; and when otherwise used not exceeding one-fourth of an acre and the dwelling house thereon and its

appurtenances and occupied by him shall be exempt from execution, from the lien of every judgment and from liability for the debts of such owner to the amount of five thousand dollars, except laborers', mechanics' and purchase money liens and mortgages and taxes and except as otherwise provided. Such exemption shall not be impaired by temporary removal with the intention to reoccupy the premises as a homestead nor by the sale thereof, but shall extend to the proceeds derived from such sale to an amount not exceeding five thousand dollars, while held, with the intention to procure another homestead therewith, for two years. Such exemption extends to land owned by husband and wife jointly or in common and to the interest therein of tenants in common, having a homestead thereon, with the consent of the cotenants, and to any estate less than a fee.

(2) Any owner of a homestead against whom a judgment has been rendered and docketed, and any heir, devisee or grantee of such owner, or any mortgagee of such homestead, may proceed under section 269.56 for declaratory relief if such homestead is less than five thousand dollars in value and the owner of such judgment shall fail, for ten days after demand, to execute a recordable release of such homestead from his judgment lien. [1931 c. 345; 1935 c. 541 s. 232]

Note: In determining the quantity of land which may be selected as a homestead outside a city, one-half of the area of abutting highways and all of the area of traversing highways, must be figured as part of the forty acres selected. An owner may select a forty-acre homestead out of two different but contiguous governmental subdivisions, even though separated by a highway. That part of the land purchased was leased, thereby preventing occupancy pending the expiration of the lease, did not prevent the purchaser from selecting the land leased as part of the homestead. *Eaton Center Co.-op. C. Co. v. Kalkofen*, 209 W 170, 244 NW 620.

Insurance money on burned homestead property is garnishable in action on mortgage note and for foreclosure purchase money mortgage. *Cavadini v. Larson*, 211 W 200, 248 NW 209.

Absence in a sister state from a homestead over a long period of years, and a contemplated continued absence for an indefinite period which must necessarily consume the greater part of a lifetime, coupled with the exercise of the right of suffrage in such state, is not a "temporary removal" notwithstanding an expressed intention of ultimate return to the homestead, and the right of exemption is extinguished. *Pedersen v. Nielsen*, 212 W 608, 250 NW 400.

Premises may be held as a homestead by a single person although he rents them to another, if he boards and lodges with the tenant. *Estate of Fish*, 214 W 464, 253 NW 387.

Where an owner who had lived in a city residence with her husband lived elsewhere for several years, intending to return if her husband obtained work in the city, her removal was not a temporary removal with the intention to reoccupy the property as her homestead, and the property ceased to be her homestead. *Hauser v. Schauer*, 215 W 75, 254 NW 343.

Something more overt than a subsequent mere hope or vague intention to use property as a homestead at some future time is necessary in order to exempt the property

from the lien of judgments. *Petition of Robers*, 220 W 547, 265 NW 578.

Rural premises consisting of about three acres of land, of which about one-half acre was occupied by a garden in which vegetables for family use and for sale were raised, and on which were located sixteen cottages or wooden shacks, in one of which the homestead claimant and family lived, except during three or four winter months of each year, and the remainder of which were rented out during the summer season to tourists and persons on vacation, constituted a "homestead," where the business of renting the cottages was conducted for the purpose of maintaining a home. *Roche v. Du Bois*, 223 W 438, 271 NW 84.

During the life of the life tenant, a remainderman cannot acquire a homestead right in the land by occupying it with or subject to the life tenant. *Qualley v. Zimmerman*, 231 W 341, 285 NW 735.

In 272.20 (1), Stats. 1933, permitting the selection of a homestead by the owner thereof consisting, when not included in any city or "village," of land not exceeding forty acres, used for agricultural purposes, the word "village," considered in the light of the history of such statute and in connection with the construction statute on the word "village," (370.01 (33)) meant an "incorporated village," so that a homestead in an unincorporated village was not limited thereby to one-fourth of an acre. A compact body of land, situated in an unincorporated village and not exceeding the statutory limits as to area or value, consisting of two adjoining lots, both formerly occupied by a decedent, on one of which he had his dwelling house, and on the other of which he personally conducted a tavern and dance hall, could properly constitute his homestead. Hence the decedent's widow, proceeding under 314.05, could select the land in question as the homestead to be assigned to her. *Estate of McKenzie*, 232 W 425, 287 NW 695.

272.21 Homestead, how set apart after levy. (1) Whenever a levy shall be made upon lands of any person, he may notify the officer making such levy, at any time before the sale, that he claims a homestead in such lands, giving a description thereof, and his estimate of the value thereof; and the remainder alone shall be subject to sale under such levy, unless the plaintiff in the execution shall deny the right to such homestead or be dissatisfied with the quantity or estimate of the value of the land selected.

(2) If such plaintiff is dissatisfied with the quantity selected or the estimate of the value thereof, the officer shall cause such lands to be surveyed, beginning at a point to be designated by the owner and set off in compact form, including the dwelling house and appurtenances, the amount specified in section 272.20, but the owner may have any less quantity of land set off by such survey so as to bring the value of the premises claimed as a homestead, to a value not exceeding five thousand dollars. After the lands are surveyed and set off, if in the opinion of the plaintiff, the same shall be of greater value than five thousand dollars, the officer may still advertise and sell the premises so set off, and out of the proceeds of such sale pay to the homestead claimant the sum of five thousand dollars and apply the balance of the proceeds of such sale on the execution; but no sale shall be

made in the case last mentioned unless a greater sum than five thousand dollars shall be paid for said premises. The expenses of such survey and sale shall be collected on the execution if the owner claimed as his homestead a greater quantity of land or land of greater value than he was entitled to; otherwise such expenses shall be borne by the plaintiff.

(3) If such survey be made the land not exempt shall be sold, but if any person shall neglect or refuse to select his homestead and notify such officer, such officer shall, upon request of the plaintiff, and may without such request, give notice to such person that at a time and place to be therein named he will survey and locate the homestead; and unless such person shall on or before the time so fixed select such homestead, such officer shall survey and locate and set the same off in a compact form, including the dwelling house and its appurtenances, but in such case he shall not set off land less in area than is provided for in section 272.20. If the owner after such notice selects his homestead, then the provisions of this section shall apply the same as if he had selected it before such notice.

(4) A homestead so selected and set apart by such officer shall be the homestead of such person subject to the limitation as to value as herein stated. The costs of such notice and survey shall be collected upon the execution. A failure of the officer to set apart such homestead shall affect such levy, only as to such homestead; and the failure of such person to select his homestead shall not impair his right thereto, but only his right to select the same when such selection shall be lawfully made by such officer. After such homestead is thus set off by such officer, if in his opinion or in the opinion of the plaintiff, the premises are of greater value than five thousand dollars he may sell the same as where the owner makes the selection.

(5) If the land claimed as a homestead does not exceed the area provided by law but does exceed, in value, five thousand dollars, the officer shall not be bound to set off any portion thereof as a homestead but may sell the same, unless the debtor shall make his selection of such a portion thereof as shall not exceed five thousand dollars in value. [1935 c. 541 s. 233]

272.22 [Renumbered section 370.01 (46) by 1935 c. 541 s. 234]

272.23 [Renumbered section 272.19 by 1935 c. 541 s. 231]

272.24 **Indemnity may be required.** If there is any reasonable doubt as to the ownership of the property or as to its liability to be taken on the execution the officer may require sufficient security to indemnify him for levying upon such property. [1935 c. 541 s. 235]

Note: Under a statute requiring appeal from an order to be taken within sixty days from entry thereof, where the order was entered October 26, the appeal bond was dated December 20, surety did not justify until January 20, the bond was not filed until Jan-

uary 24, and appellants made no showing that sureties could not have justified the proper time, or that failure to file the appeal bond in time resulted from mistake or accident, the appeal was dismissed. In re Stanley's Will, 228 W 530, 280 NW 685.

272.25 **Money applied; negotiable instruments sold.** Upon executions against property the officer shall levy upon any current money of the United States and shall pay and return the same without exposing it for sale, and he may also levy upon and sell any evidences of debt circulated as money, or a bond or other instrument for the payment of money which is negotiable or payable to the bearer or holder. [1935 c. 541 s. 236]

272.26 **Equities sold; possession not disturbed.** When personal property shall be pledged or mortgaged the right and interest in such property of the pledgor or mortgagor may be sold on execution against him, and the purchaser shall acquire all his right and interest, and shall be entitled to the possession of such property on complying with the terms and conditions of the pledge or mortgage; but the officer shall not take such property out of the possession of the pledgee or mortgagee when the judgment debtor is not entitled to the possession thereof unless the judgment creditor shall have complied with the terms and conditions of such pledge or mortgage. [1935 c. 541 s. 237]

272.27, 272.28 [Repealed by 1935 c. 541]

272.29 **Notice of sale of personal property, manner, adjournment.** (1) No execution sale of personal property shall be made unless twenty days previous notice of such sale shall have been given by posting notices thereof in three public places of the town or municipality where such sale is to be had, specifying the time and place of sale provided that when any property seized shall be likely to perish or depreciate in value before the expiration of the twenty days the court or a judge may order the same to be sold in such manner and upon such terms as the best interests of the parties demand. Every such sale shall be made at auction between the hour of nine o'clock in the forenoon and five o'clock in the afternoon and no property shall be sold unless the same be in view of those attending the sale, except in the case of the sale of the interest of the judgment debtor in property in the possession of a pledgee or mortgagee. It shall be offered for sale in such lots and parcels as shall be calculated to bring the highest price.

(2) Such sale may be adjourned as provided in section 272.31 for sale of real estate. [1933 c. 77, 86; 1935 c. 541 s. 240]

272.30 Liability of trust estates. Real estate held by any one in trust or for the use of another shall be liable to debts, judgments, executions and attachments against the person to whose use it is held. [1935 c. 541 s. 241]

272.31 Notice of sale of realty; manner; adjournment. (1) The time and place of holding any sale of real estate on execution shall be publicly advertised for six weeks successively by posting a written notice describing the real estate to be sold with reasonable certainty in three public places in the town or municipality where such real estate shall be sold; and also in three public places of the town or municipality in which the premises are situated.

(2) A copy of such notice shall be printed each week in a newspaper of the county.

(3) If there be no newspaper published in the county and the premises are not occupied by any person against whom the execution is issued or by some person holding as tenant or purchaser under him such notice shall be so published in a paper printed at Madison.

(4) The court, or a judge, upon application of the party issuing the execution shall direct, by order, the newspaper in which the publication of the notice is to be made.

(5) If at the time appointed for any such sale the sheriff shall deem it for the interest of all persons concerned he may adjourn the sale from time to time, not exceeding in all three months. In case of such adjournment public notice thereof shall be given at the time and place first fixed for the sale. If the adjournment shall be for more than one day further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

(6) Every sale shall be at auction, between nine o'clock in the forenoon and five o'clock in the afternoon. [1935 c. 541 s. 242]

272.32 [Renumbered section 272.31 by 1935 c. 541 s. 242]

272.33 Execution; sale in parcels; limitation. When real estate offered for sale on execution consists of several lots, tracts or parcels they shall be separately offered for sale; and if any person claiming to be the owner of any of such lots or parcels or an interest or estate therein or claiming to be entitled to redeem the same shall require it to be offered for sale separately, the sheriff shall offer the same for sale accordingly. No more shall be sold than shall appear necessary to satisfy the execution. [1935 c. 541 s. 243]

272.34 Execution sale without notice. Any officer who shall sell real estate upon execution without having given the previous notices directed by section 272.31, or otherwise than in the manner prescribed by law, shall be liable to the party injured in the sum of one thousand dollars damages and also for the actual damages sustained. [1935 c. 541 s. 244]

272.35 Execution; taking down notice. If any person shall take down or deface any notice of a sale upon execution put up by any officer, previous to the day of sale therein specified, unless upon satisfaction of the execution or upon the consent of the parties to the action, such person shall be liable to the party suing out such execution in the sum of fifty dollars. [1935 c. 541 s. 245]

272.36 Execution sale, want of notice, when immaterial. The omission of any officer to give the notice of execution sale required or the taking down or defacing of any such notice shall not affect the validity of any sale made to a purchaser in good faith, without notice of any such omission or offense. [1935 c. 541 s. 246]

272.37 Execution sale; officer not to purchase. The officer to whom any execution shall be directed and his deputy holding any execution and conducting any sale in pursuance thereof shall not, directly or indirectly, purchase any property at such sale; and every purchase made by such officer or deputy, or to his use, shall be void. [1935 c. 541 s. 247]

272.38 Execution, certificate of sale, filing. (1) Upon the sale of real estate on execution the officer making the same shall make out and subscribe duplicate certificates of such sale containing a particular description of the premises sold; the price bid for each distinct lot or parcel; the whole consideration money paid; and the time when such sale will become absolute and the purchaser will be entitled to a conveyance pursuant to law and shall file one of the said duplicate certificates within ten days after such sale in the office of the register of deeds and shall deliver the other to the purchaser. If there be two or more purchasers a certificate shall be delivered to each.

(2) Promptly following every execution sale the sheriff shall return the execution into court and file with it a detailed report of his doings upon the execution. [1935 c. 541 s. 248]

272.39 Execution sale; redemption of real estate. Within one year after an execution sale the real estate sold or any lot, tract or portion that was separately sold may be redeemed by the payment to the purchaser, his personal representatives or assigns, or to the then sheriff of the county where such real estate is situated, for the use of such purchaser, of the sum paid on the sale thereof, together with the interest from the time of the sale. [1935 c. 541 s. 249]

272.40 Execution sale; who may redeem. (1) Redemption from execution sale of real estate may be made by a person whose right and title was sold or if such person be

dead by his devisee of the premises sold, and if the same shall not have been devised, by his heirs; or, by any grantee of such person who shall have acquired an absolute title to the premises sold, or to any lot, parcel or portion separately sold.

(2) Any such heir or devisee or grantee who shall have acquired an absolute title to a portion of the estate sold or a portion of any lot, tract or parcel that shall have been separately sold may redeem the portion on the same terms and in the same manner as if he were grantee of the whole lot or parcel, and shall have the same remedy to enforce contributions from those who shall own the residue thereof as if the sum required to be paid by him to effect such redemption had been collected by a sale of the portion belonging to such grantee, heir or devisee.

(3) If there be joint tenants or tenants in common in premises sold each tenant may redeem the share or interest belonging to him by paying to the purchaser or officer, a sum that will bear the same proportion to the whole sum bid therefor as the redeemed share bears to the whole number of shares in such premises together with the interest. [1935 c. 541 s. 250]

Note: A debtor's absolute conveyance of land before judgment is recovered against him vests the right to redeem from a subsequent execution sale solely in the grantee. *Wiedner v. Parsons*, 206 W. 438, 240 NW 367.

272.41, 272.42 [Renumbered section 272.40 (2), (3) by 1935 c. 541]

272.43 **Execution sale; redemption makes sale void.** Upon redemption of any real estate sold on execution, the sale of the premises redeemed and the certificates of such sale, so far as they relate thereto, shall be null and void. [1935 c. 541 s. 251]

272.44 **Execution; purchaser's interest; (1) WHO MAY ACQUIRE.** In case the premises sold on execution or any part of them shall not be redeemed within the year prescribed by sections 272.39 and 272.40 then the interest of the purchaser may be acquired within three months after the expiration of the redemption period by the persons and on the terms prescribed in this section.

(2) **CREDITORS, MORTGAGEES, INTEREST.** Any creditor of the person against whom such execution issued having a judgment or a recorded mortgage which is a lien upon the premises sold, or upon any lot or parcel or portion separately sold, may within fifteen months from the time of such sale by paying the sum paid on the sale thereof, together with interest from the time of such sale, thereby acquire all the rights of the original purchaser, subject to be defeated in the manner mentioned in section 272.48.

(3) **SALES OF UNDIVIDED INTERESTS.** Any owner of such judgment or mortgage which is a lien upon any undivided share or interest in any real estate sold under execution, may, within the same time, on the same terms and in the same manner, acquire the title of the original purchaser to such share or interest by paying such part of the whole purchase money of such real estate as shall be in a just proportion to the amount of such share or interest. [1935 c. 541 s. 252]

Note: Section 272.45, Stats. 1931, is construed to limit the right of redemption of land from execution sale to a creditor of the person against whom the execution issued. Hence a creditor was not entitled to redeem where he did not hold as security a mortgage from the judgment debtor pledging a mortgageable interest, as the security referred to in the statute must be one which has proceeded from the judgment debtor as an incident to the debt. *Wiedner v. Parsons*, 206 W. 438, 240 NW 367.

272.45, 272.46, 272.47 [Renumbered section 272.44 by 1935 c. 541 s. 252]

272.48 **Execution sale; creditors may acquire title of preceding creditor.** Whenever any creditor shall acquire the title of the original purchaser, pursuant to section 272.44, any other creditor who might have acquired such title may become a purchaser thereof from the first creditor who acquired the same upon the following conditions:

(1) By paying to such first creditor, his personal representatives or assigns the sum which he paid to acquire such title, together with interest thereon from the time of his payment.

(2) If the judgment or mortgage by virtue of which the first creditor acquired the title of the original purchaser be prior to the judgment or mortgage of such second creditor and is still a lien as to such second creditor he shall also pay to such first creditor the amount due on his judgment or mortgage.

(3) In the same manner any third or other creditor who might have acquired the title of the original purchaser may become a purchaser thereof from the second, third or other creditor who may have become such purchaser from any other creditor, upon the terms and conditions before specified in this section.

(4) If the original purchaser of any premises shall also be a creditor of the defendant against whom the execution issued, and as such might acquire the title of any purchaser according to the preceding provisions, he may avail himself of his judgment or mortgage, in the manner and on the terms prescribed, to acquire the title which any creditor may have obtained.

(5) But the judgment creditor, under whose execution the real estate was sold cannot acquire the title of the original purchaser or of any creditor to the premises so sold by virtue of the judgment on which such execution issued. [1935 c. 541 s. 253]

272.49, 272.50, 272.51 [*Renumbered section 272.48 by 1935 c. 541 s. 253*]

272.52 Payment on acquisition of purchaser's or creditor's interest. The sums required to be paid to acquire the title of the original purchaser at the execution sale or to become a purchaser from any creditor may be paid to such purchaser or creditor, his representative or assigns or to the then sheriff of the county where the real estate is situated; upon such payment being made the title of the original purchaser shall be thereby transferred to the creditor acquiring the same and from such creditor to any other creditor becoming a purchaser thereof. [1935 c. 541 s. 254]

272.53 Execution sale; evidences of right of creditor to acquire title. To entitle any creditor to acquire the title of the original purchaser on the execution sale or to become a purchaser from any other creditor he shall exhibit to such purchaser or creditor or to the sheriff the following evidences of his right:

(1) A certified copy of the docket of his judgment or of the record of his mortgage.

(2) A certified copy of all assignments of such judgment or mortgage which are necessary to establish his claim.

(3) A certified copy of his letters of administration or letters testamentary, in case of an administrator or executor.

(4) An affidavit of such creditor or his attorney, or agent stating the sum due on such judgment or the sum owing on such mortgage at the time of claiming such right to purchase. Within three days after making such acquisition such creditor shall file such evidences of his right in the office of the register of deeds of the county where the original certificate of sale is filed. [1935 c. 541 s. 255]

272.54 Execution sale, title when divested, action for injury to premises. The right and title of the person against whom the execution was issued, to any real estate which shall be sold thereby, shall not be divested by such sale until the expiration of fifteen months from the time of sale; and if such real estate shall not have been redeemed and a deed shall be executed in pursuance of a sale the grantee shall be vested with the legal estate from the time of the sale for the purpose of an action for an injury to such real estate. [1935 c. 541 s. 256]

272.55 Execution sale; deed when to issue; limitation. If after the expiration of fifteen months from the time of the sale of any real estate upon execution any part of the premises sold shall remain unredeemed, the sheriff of the county in which such real estate is situated shall, on demand, execute a deed of the premises unredeemed to the person entitled thereto, which shall convey all the right, title and interest which was sold upon such execution. But no such deed shall be issued after twenty years from the date of the sale. [1935 c. 541 s. 257]

272.56 Sheriff's deed, who grantee if purchaser dead. In case the person who would be entitled to a deed of real estate sold on execution shall die previous to the delivery of such deed the sheriff shall execute a deed to his executors or administrators. The real estate so conveyed shall be held in trust for the use of the heirs or devisees of such deceased person, subject to the dower of his widow, but may be sold for the payment of his debts in the same manner as lands whereof he died seized. [1935 c. 541 s. 258]

272.57 Sheriff's deed, recovery of purchase price on eviction. If the purchaser of real estate sold on execution, his heirs or assigns shall be evicted from such real estate, or if in an action for the recovery thereof judgment shall be rendered against him or them in consequence of any irregularity in such sale, or of the judgment upon which such execution issued being vacated or reversed, he or they may recover of the party for whose benefit such real estate was sold the amount paid on the purchase thereof, with interest. [1935 c. 541 s. 259]

272.58 Execution sale; judgment, creditor's further remedy. The party for whose benefit real estate was sold on execution and his personal representatives, upon recovery being had against him under section 272.57 in consequence of any irregularity in such sale, may have further execution upon the judgment to levy the sum paid on such sale, with interest. Such judgment shall be effectual for that purpose against the defendant, his personal representative, heirs and devisees; but not against any purchaser in good faith or any incumbrancer whose title or whose incumbrance accrued before the levy of such execution. [1935 c. 541 s. 260]

272.59 Contribution when lands of several are sold on execution. (1) When lands of several persons shall be liable to satisfy any final judgment and the whole of such judgment or more than a due proportion thereof shall be paid by one of such persons or shall be levied upon the lands of any one or more of such persons, the persons so aggrieved

or their personal representatives may compel a just contribution by all the persons whose lands ought to contribute to said satisfaction.

(2) Such lands are liable to contribution in the following order:

(a) If they were conveyed by the defendant in the execution, they are liable in succession, commencing with the lands last conveyed.

(b) If they were sold under execution against the defendant, they are liable in succession, commencing with the lands sold under the youngest judgment.

(c) If there be lands so liable, which were conveyed by the defendant in execution, and also lands which were sold under execution against him they are liable in succession, according to the order herein prescribed. [1935 c. 541 s. 261]

272.60 [Renumbered section 272.59 by 1935 c. 541 s. 261]

272.61 **Proceedings to recover contribution.** In an action to compel contribution under section 272.59 the court shall, in a proper case, permit the plaintiff to use the original judgment and issue execution thereon, for the amount which ought to be contributed by the lands subject to the lien of such judgment, and for that purpose such original judgment shall remain a lien, when preserved as provided in section 272.62, for the term of ten years from the date of the entry thereof, to the extent of the sum which ought to be so contributed, but in all cases such liens shall continue for the purposes above stated for three years after any sale under which contribution is claimed. [1935 c. 541 s. 262]

272.62 **Lien, how preserved after execution sale; clerk's fee.** To preserve the lien of the original judgment upon lands and subject them to sale on execution under section 272.61 the person aggrieved shall, within twenty days after the payment for which he claims a contribution, file an affidavit with the clerk of the court in which the original judgment was rendered, stating the sum paid and his claim to use such judgment for the reimbursement thereof; and the clerk shall enter in the margin of the docket of such judgment, the sum so paid and that such judgment is claimed to be a lien to that amount. To preserve such lien upon property situated in some other county a similar affidavit and notice must be filed with the clerk of the court and a like entry made upon the docket of such judgment in such county. The clerk's fee therefor shall be one dollar. [1935 c. 541 s. 263]

272.63 **Sheriff's deed; writ of assistance.** Whenever title has been perfected to any real estate sold on execution, or to any part thereof or interest therein, and the defendant in execution or any other person claiming under him by title accruing subsequently to the docketing of the judgment upon which it issued shall be in possession of any such real estate or part thereof or interest therein, and upon demand of the person in whom such title has been perfected, shall refuse to surrender the possession he may apply to the court from which the execution issued or the presiding judge thereof, by verified petition, for a writ of assistance to obtain possession. A copy of such petition, with a notice of the time and place when and where the same will be presented, must be served upon the person against whom the writ is prayed at least ten days before the same is presented; such petition may be served as a summons in an action in the circuit court. The court or such judge may direct such writ to issue, and the same shall be executed and return made in like manner as upon a sale upon a judgment for foreclosure of a mortgage. [1935 c. 541 s. 264]

272.64 **Judgment lien, how discharged on redemption.** When any judgment debtor or person claiming under him shall have redeemed the lands or any part thereof or interest therein sold on execution the person or officer to whom the redemption money was paid shall execute, acknowledge and deliver to the redeemer a certificate, attested by two witnesses, stating the fact of such redemption, the date thereof, the amount of money paid, with a description of the lands or interests therein so redeemed. Such certificates may be recorded in the office of the register of deeds of the county in which the lands are situated, and shall be presumptive evidence of the redemption of the lands therein described from such sale and from the lien of the judgment by virtue of which such sale was made. [1935 c. 541 s. 265]