

## CHAPTER 304.

## ATTACHMENT AND GARNISHMENT.

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**304.01 Attachment; liquor debts.** Any person may commence an action by warrant of attachment in a justice's court and proceed thereon against the property of his debtor in the cases, upon the condition, and in the manner provided by this chapter. No warrant of attachment shall issue in any action, or in aid of any action, or in aid of any execution in any action brought to recover the price or value of strong, spirituous, malt, ardent, or intoxicating liquors sold at retail.

**304.02 Affidavit for attachment; amendment.** (1) Before a warrant of attachment shall be issued the plaintiff or some person in his behalf shall make and file with the justice an affidavit stating that the defendant therein is indebted to the plaintiff in a sum exceeding five dollars and specifying the amount of such indebtedness as near as may be, over and above all legal set-offs, and that the same is due upon contract, express or implied, or upon judgment or decree of some court, and containing a further statement that the deponent knows or has good reason to believe either,

(a) That the defendant is a foreign corporation, or, if created under the laws of this state, that all the proper officers thereof on whom to serve a summons do not exist, are nonresidents of the state or cannot be found;

(b) That the defendant is not a resident of this state;

(c) That the defendant has absconded or is about to abscond from this state;

(d) That the defendant has removed or is about to remove any of his property out of this state, with intent to defraud his creditors;

(e) That the defendant resides in any other county and more than one hundred miles from the residence of the justice;

(f) That the defendant contracted the debt under fraudulent representations;

(g) That the defendant so conceals himself that the process of summons cannot be served upon him;

(h) That the defendant has fraudulently conveyed or disposed of or is about fraudulently to convey or dispose of any of his property or effects so as to hinder or delay his creditors;

(i) That the action is brought against the defendant as principal upon an official bond to recover money due to the state or some county or other municipality therein.

(2) Or a false affidavit showing that a cause of action sounding in tort exists in favor of the plaintiff against the defendant therein; that the damages sustained and claimed exceed the sum of five dollars, specifying the amount claimed, and the further statement, either:

(a) That the defendant is not a resident of this state or that his residence is unknown and cannot, with due diligence, be ascertained; or

(b) That the defendant is a foreign corporation.

(3) Said affidavit may be amended at any time before trial by the substitution of a new affidavit containing allegations of facts existing at the time of making the former affidavit, and the new affidavit shall stand in lieu of the original one for all purposes, and if traversed or denied trial shall be had thereon as in other cases.

**304.03 When returnable.** In the first five cases mentioned in section 304.02 the warrant of attachment shall be returnable in three days; but in all other cases it shall be returnable as an ordinary summons.

**304.04 Form of warrant.** The warrant of attachment may be in the following form:

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

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

You are commanded to attach the goods and chattels, moneys, effects and credits of .... . . . ., or so much thereof as shall be sufficient to satisfy the sum of .... . . . ., with interest and costs of suit, in whosoever hands or possession the same be found in your county, and so provide that the goods and chattels so attached may be subject to further proceedings thereon as the law requires; and also to summon the said .... . . . ., if to be found, to be and appear before me at my office in said town, on the .... day of ...., A. D. 19.., at .... o'clock in the ....noon, to answer to .... . . . ., to his damage two hundred dollars or under.

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

J. P., Justice of the Peace.

**304.05 How executed.** The officer shall execute a warrant of attachment by serving the same upon the defendant in the same manner that a summons, returnable within the like times respectively, is required to be served and by attaching the goods and chattels, moneys, effects and credits of the defendant, not exempt by law, and make due return of his doings thereon.

**304.06 Pleading and proceedings.** Like pleading of the parties and like proceedings shall be had in actions commenced by warrant of attachment as in actions founded on contracts and commenced by summons.

**304.07 Release of attached property.** When the property of the defendant shall be actually seized on attachment, whether such property be found in the possession of the defendant or some other person, the defendant or any other person for him, or the person in whose possession the same shall be found may obtain possession thereof by giving bond, with one or more sureties, to the satisfaction of the officer executing the warrant in double the value of the property so attached or in double the amount claimed to be due in the affidavit for the attachment, conditioned that the same shall be forthcoming when and where the justice shall direct and shall abide the judgment of the justice.

**304.08 Dissolution of attachment; bond.** Attachments may be dissolved on motion made in behalf of the defendant at any time before final judgment if the defendant shall appear and plead to the action and give bond to the plaintiff with good and sufficient surety, to be approved by the justice, in double the amount of the value of the property, effects and credits attached, conditioned that if judgment be rendered against him in such action he will pay the amount thereof with costs and interest thereon.

**304.09 Effect of dissolution.** When any attachment shall be dissolved the property and effects attached shall be released and the garnishees shall be discharged and the action proceed as if it had been commenced by a summons only.

**304.10 Sale of perishable property.** When property shall be seized on attachment, which is likely to perish or depreciate in value before the probable end of the action or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the officer in the same manner and upon the same notice as goods are required to be sold on execution; provided, that if it shall be made to appear to the satisfaction of the justice that such property is likely to perish before the expiration of the time required by law for notice of such sale he may by order direct that such sale may be made upon the giving of not less than one day's such notice. The proceeds of such sale shall remain in the hands of the officer, subject to be disposed of as the property would have been if seized upon in specie.

**304.11 Officer's compensation.** When property is seized on attachment the justice may allow to the officer having charge thereof such compensation for his trouble and expenses in keeping and maintaining the same as shall be reasonable and just.

**304.12 Publication after attachment.** When the defendant cannot be summoned and his property shall be attached, if he do not appear in the action at the return of the warrant of attachment, the justice shall enter an order on his docket requiring the plaintiff to publish in a newspaper, if there be one printed in the county, and if there be none, to post up in three of the most public places therein a notice to the defendant that a warrant of attachment has been issued against him and his property attached to satisfy the demand of the plaintiff, and that unless he appear before the justice at some time and place to be mentioned, stated in the order and in said notice, not less than twenty nor more than ninety days from the date thereof, judgment will be rendered against him and his property sold

to pay the debt; and the justice shall continue the cause to the time and place mentioned in said order.

**304.13 Form of notice of attachment.** The notice may be in the following form:

.... County, }  
Town of ..... } ss. In Justice's Court.

To ..... :

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

Dated this .... day of ....., A. D. 19... ....., Plaintiff.

**304.14 Notice, how published, etc.** Such notice shall be set up or published at least fifteen days before the expiration of the time at which the party is required to appear; and the setting up may be proved either by the return of the officer, upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

**304.15 Proceedings after publication.** When the defendant shall be notified as aforesaid and shall not appear and answer to the action that fact shall be entered by the justice in his docket and the plaintiff may proceed thereon to final judgment as in actions commenced by summons; but no execution shall be issued on such judgment, either against the defendant or garnishee, or money paid to the justice thereon until the plaintiff or some person in his behalf shall execute a bond, in double the amount of such judgment, to the defendant, 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 debt or damages adjudged against him or any part thereof the plaintiff will refund the whole or such part thereof as may be found not justly due on a review of the case.

**304.16 Traverse of attachment.** In any action commenced by attachment the defendant may, whether he shall answer the complaint or not, by special answer, verified and filed with the justice at or before the time at which the warrant of attachment is returnable, deny the existence at the time of making the affidavit for the attachment of any or all of the material facts stated therein, except the alleged liability and the amount thereof. The issue so raised shall be tried by the justice and the affirmative thereof shall be upon the plaintiff; and in determining such issue the justice shall follow the same rules by which courts of records are governed in the trial of the traverse of an attachment. If an issue shall be made and a trial had in the action by the justice or by the jury the trial upon such traverse shall be had at the same time with the trial of such action, but in all cases the justice shall make and file in the cause his finding upon the traverse separately from the verdict or finding in the action.

**304.17 Proceedings and costs after trial of traverse.** If the justice shall determine the issue upon such traverse in favor of the defendant he shall tax his costs on such trial and forthwith enter in his docket an order that the property attached be returned to the defendant, and shall also assess the damages sustained by him by reason of the taking and detention or sale of the property attached or of any injury thereto. If the defendant shall succeed in the action the justice shall render judgment against the plaintiff for such damages, together with the costs of such traverse and of the action; and if the plaintiff shall recover the justice shall set off against his recovery and the costs the said damages and the costs of the trial of such traverse and shall exclude from the costs taxed in favor of the plaintiff all costs caused by or arising from the attachment; and if said damages and costs of the traverse shall exceed the plaintiff's recovery and the costs in the action he shall render judgment against the plaintiff for the overplus. If on the trial of such traverse the justice shall find for the plaintiff he shall tax his costs on such trial, and the amount so taxed shall, if he recover in the action, be added to his costs therein; and if the defendant recover judgment in the action such amount so taxed shall be applied toward payment thereof.

**304.18 Appeal.** Either party may appeal from the finding upon the trial of any traverse to the court to which an appeal might be taken from a judgment in the action, in the same manner that he might appeal from such judgment, but such appeal must be taken separately from any appeal from such judgment. The court to which such appeal is taken shall try and determine the issue raised by such traverse in the same manner as though the action had been brought and the traverse served and filed therein, and may increase or diminish any assessment of damages made by the justice.

**304.19 Undertaking to stay proceedings.** No such appeal shall stay or prevent the sale of the attached property if the finding upon the traverse is in favor of the plaintiff, or the delivery thereof to the defendant if such finding is in his favor, unless the party appealing shall file with the justice, at the time of taking the appeal, a written undertaking on his part, with one or more sureties, to be approved by the appellate court, the judge thereof or by the justice, to the effect, if the defendant shall be appellant, that, if the finding appealed

from shall be affirmed or judgment be rendered upon such appeal against the appellant, he will pay the plaintiff the amount for which judgment has been or shall be rendered, with interests and costs, or, at the option of the appellant, to the effect that he will pay the plaintiff the value of the property returned to him, which shall be determined by the court, with interest thereon, the costs of the action and of the traverse; and, if the plaintiff shall be appellant, that if the finding upon the traverse be affirmed or judgment be rendered against him he will pay the defendant the value of the property attached, as determined by the court, with interest thereon and all damages assessed and costs taxed against him by reason of the attachment.

**304.20 Garnishment affidavit.** Whenever any action shall have been commenced, by summons, upon contract, express or implied, or by warrant of attachment in a justice's court, if the plaintiff or some one in his behalf shall make and deliver to the officer having such summons or attachment an affidavit stating that the affiant has good reason to believe that some person (naming him) is indebted to the defendant or has personal property in his possession or under his control belonging to the defendant, or when there is more than one defendant, to any or either of them, not by law exempt from sale on execution, and demand that he shall summon such person as garnishee such officer shall summon such person in writing to appear before the justice, on the return day of such summons or attachment, to answer touching his liability as garnishee. Such affidavit may be amended with the same effect as is provided in section 304.02. Any number of garnishees may be embraced in the same affidavit and garnishee summons but if a joint liability be claimed against any it shall be so stated in such affidavit and the garnishee named as jointly liable shall be deemed jointly proceeded against, otherwise the several garnishees shall be deemed severally proceeded against.

**304.21 Quasi-garnishment of public employes.** (1) Whenever any person, firm or corporation shall recover a judgment against any person, firm or corporation, and said judgment debtor at the time of the rendition of said judgment, or at any time thereafter during the life of said judgment, shall have money due, or to become due, from the state or any city, county, village, town, school district or other municipal corporation, said judgment creditor may file a certified copy of such judgment with the secretary of state, except in case the judgment debtor is a contractor engaged upon public work for the state of Wisconsin, or with the clerk of such county, city, village, town, school district or other municipal corporation, as the case may be. In case the judgment debtor is a contractor engaged upon public work for the state of Wisconsin, the certified copy of such judgment shall be filed with the department, board or commission having jurisdiction over the work.

(2) It shall thereupon become the duty of the proper officers of such state, county, city, village, town, school district or other municipal corporation, after the expiration of thirty days from the date of filing the certified copy of said judgment, to pay to the owner of such judgment such sum as at the time of said filing is due, and thereafter and until said judgment is fully paid to pay to the owner of said judgment such sum or sums as may at any time or times be due from the state, or any such county, city, village, town, school district or other municipal corporation to such person, firm or corporation, and to deduct the sum or sums so paid as aforesaid from the amount due; provided that if the sum or sums due as aforesaid is for salary or wages of any officer or employe of any state, county, city, village, town, school district or other municipal corporation, the same shall be exempt from the provisions of this section to the same extent as salaries and wages are by law exempt from garnishment; provided further that any repayment to any such officer or employe of disbursements made and expended by such officer or employe in discharge of the duties of his office, shall not be subject to any judgment or lien mentioned and described herein; provided, further, that if any such judgment debtor shall have appealed from said judgment, at the date of the filing of said certified copy of said judgment, or if the time for appealing has not expired at the date of said filing, then and in either such case, if the said judgment debtor shall within thirty days from the date of filing of said certified copy of said judgment file with the officer, department, board or commission with whom the judgment is properly filed, an affidavit, that an appeal has been, or will be taken from such judgment within the time prescribed by law, such payment shall not be made until the final determination of such appeal, and if such affidavit is not filed, payment made as herein provided shall be a final discharge of any liability of the state, or any such county, city, village, town, school district or other municipal corporation to such person, firm or corporation to the extent of such payment. This section shall apply only to such judgments as may hereafter be entered and shall in no way be construed as affecting any rights which any person may have at the time of its taking effect.

(3) Notwithstanding priority of filing, a judgment filed under this section shall have precedence over an assignment, filed subsequent to the commencement of suit upon which such judgment is obtained.

(4) Payment to the owner of the judgment as provided in subsection (2) of this section shall not be made from funds earned by a contractor on public work until three months after the date of final completion and acceptance of the contract and until all claims and expenses of performing such work have been paid. For the purpose of administering the provisions of this section, sworn statements of the contractor setting forth the unpaid claims and expenses of performing the work may be accepted by the proper officer, department, board or commission of the state, city, county, village, town, school district or other municipal corporation, and such claims and expenses shall have precedence over judgments filed under this section, and may be paid from funds earned by the contractor on such public work, subject to prior liens under section 289.53, provided the owner of a judgment filed under this section or other party in interest has not filed with the officer with whom the claims are filed a protest and notice of bringing an equitable action in the circuit court for the proper county for the purpose of determining whether such claims and expenses were incurred in performing the contract, and for the purpose of proving and establishing priority of claims. At the expiration of three months after the date of final completion and acceptance of the contract, subject to prior liens under section 289.53, moneys due to a contractor on public work, in excess of the claims and expenses of performing the work then filed and admitted in sworn statements by the contractor, and claims not admitted, but on which notices of bringing equitable actions for the purpose of proving and establishing priority of the claims have been filed with the officer with whom the claims are properly filed, shall be paid to the owner of the judgment as provided in subsection (2) of this section. As to contracts completed and accepted prior to the effective date of this subsection, the three months' period for which provision is made in this subsection shall commence on the effective date of this subsection. [1935 c. 191, 334, 520]

**Note:** The filing of a transcript of a judgment has the same effect as the filing of a certified copy of the judgment. McDonald v. State, 203 W 649, 235 NW 1.

A lien on earnings of a county employe, acquired by filing a certified copy of a judgment against him more than four months preceding bankruptcy, is not affected, and the bankruptcy proceedings are subordinate to such lien. Chadek v. Forest County, 206 W 85, 238 NW 850.

Prior to the amendment made by chapter 334, Laws 1935, judgment creditors of a sheriff, who had filed certified copies of their judgments with the county clerk, were entitled to be paid, in the order of filing, all moneys due or to become due to the sheriff from the county for board of prisoners until their claims should be satisfied; and the sheriff could not cut off their rights by an assignment of his contract with the county for board of prisoners. Prielipp v. Sauk County, 215 W 16, 254 NW 369.

A divorce judgment was outside of the jurisdiction of the court so far as ordering the city clerk to pay pension money, owing to the husband from the retired firemen's pension fund, directly to the clerk of the court to be paid to the wife to satisfy her claims for alimony and for the support of a minor child; but such claims under the judgment were not unenforceable against the pension money by reason of the clause in the pension law, 62.13 (9) (d), exempting pension money from any process or order of court on account of any claim against the pensioner, and could be enforced under 304.21. Saunders v. Saunders, 243 W 94, 9 NW (2d) 629.

This section, known as quasi-garnishment statute, is not applicable to members of the legislature during session, in view of sec. 15, art. IV, Const. 20 Atty. Gen. 29.

Where judgment against county employe is filed with county clerk, such clerk should notify judgment debtor, giving him reasonable time to notify clerk if he claims exemption. Exemption may be claimed at any time before actual payment is made to judgment creditor. 21 Atty. Gen. 1003.

County officer who has certified copy of judgment filed against him cannot assign his salary to his deputy. County officer is entitled to exemption, and balance of his salary is to be paid to judgment creditor. 22 Atty. Gen. 285.

Where money is obtained by state from Reconstruction Finance Corporation and allotted to municipalities, which pay out part of same to property owners as shelter allow-

ance under relief program, funds so paid out to property owners as such allowance constitute money subject to quasi-garnishment under this section. 22 Atty. Gen. 401.

Money appropriated by county board to fair association under 59.86 is subject to quasi-garnishment. Where controversy exists over right to payment under 304.21 officer having money should hold same until controversy is settled. 22 Atty. Gen. 661.

Money allowance to be given to relief workers is not subject to quasi-garnishment under (1). 23 Atty. Gen. 116.

Filing of certified copy of divorce judgment containing order for payment of support money together with statement of clerk of court as to delinquency in payments under said judgment may not be accepted by secretary of state as authority for paying out money under this section. 23 Atty. Gen. 176.

Salaries of W.E.R.A. administrative employes are subject to quasi-garnishment under this section. 24 Atty. Gen. 277.

Judgment taken against clerical employes of county relief department is properly filed with county clerk. 24 Atty. Gen. 587.

Per diem allowed members of county board and county board committees is "salary" and mileage is "repayment of disbursements" within meaning of this section. 25 Atty. Gen. 143.

See note to 71.36, citing 25 Atty. Gen. 526.

Where dispute exists as to whether debt is retail liquor debt not subject to garnishment and whether 267.01 (5) applies to 304.21, secretary of state should withhold payment to either party until controversy has been judicially determined. 25 Atty. Gen. 642.

This section is applicable to salary of member of legislature for fifteen days next before commencement of session thereof, if such member will not be member of legislature at coming session. 26 Atty. Gen. 144.

Judgment against town may not be collected under quasi-garnishment proceedings provided by this section. 30 Atty. Gen. 69.

Lien obtained against salary of state employe by filing transcript of judgment with secretary of state under this section remains in full effect upon nonexempt salary accrued after adjudication in bankruptcy until such time as judgment is discharged by discharge in bankruptcy, and secretary of state should, for his own protection, withhold enough of bankrupt's salary to protect himself until question of discharge is finally determined. 30 Atty. Gen. 160.

Deductions required to be made by state from employes' wages or salaries for federal

victory tax will operate to reduce amount of wages or salary to which employe is entitled under 272.18 (15). 32 Atty. Gen. judgment creditors, filing judgments under 304.21, will receive and will not reduce 23.

**304.22 Garnishment; liquor debts.** No garnishee proceeding, as provided in section 304.20, shall be commenced in any action to recover the price or value of strong, spirituous, malt, ardent or intoxicating liquors sold at retail. This section shall not apply to any debts contracted prior to the taking effect of this section.

**304.23 Form of summons to garnishee.** The summons to the garnishee may be substantially in the following form:

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

The State of Wisconsin to .... :

Whereas, a summons (or warrant of attachment) has been issued by J. P., Esq., (or a summons has been signed and issued by A. L., an attorney at law of .... returnable before J. P., Esq.,) a justice of the peace of said county, returnable on the .... day of ...., A. D. 19.., in favor of ...., plaintiff, and against ...., defendant; and whereas the plaintiff (or A. B. in his behalf) has made oath that you have property in your possession or under your control belonging to the defendant (or are indebted to him):

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

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

...., Constable.

[1935 c. 273]

**304.24 Summons, how served; form of.** The officer shall serve such summons on the garnishee personally, and return the same, with the affidavit, to the justice at the same time that he shall make return of the summons or warrant and state in his return the day service was made on the garnishee. A copy of such summons shall be served on the defendant within the time service thereof is required to be made on the garnishee. If the defendant cannot be found or is not a resident of the state then service may be made upon him by publication as provided in sections 304.12 and 304.14, with like effect, unless he shall have a known agent or attorney residing within the jurisdiction of the justice, or some member of his family, of suitable age and discretion, shall reside within the same, when service may be made upon such agent or attorney or some such member of the defendant's family. The summons to the defendant may be substantially in the following form:

.... County, }  
Town of .... } ss. In Justice's Court.

To .... :

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

Dated this .... day of ...., A. D. 19... .., Plaintiff.

**304.25 Liability of garnishee.** The garnishee, from the time of the service of such summons, shall stand liable to the plaintiff to the amount of the personal property, money, credits and effects in his hands belonging to the defendant and the amount of his own indebtedness to the defendant then due or to become due, and not by law exempt from sale on execution.

**304.26 Effect of service.** (1) The service of the garnishee summons shall be deemed the commencement of an action against such garnishee; and upon the return of the constable that such summons has been duly served the justice shall enter an action in his docket in which the plaintiff in the original action shall be plaintiff and the garnishee defendant.

(2) At any time after service of the garnishee process upon the garnishee defendant, the defendant in the principal action may file with the justice a request in writing, for an immediate trial of the garnishee action. Upon the filing of such request it shall be the duty of such justice to issue an order at once, requiring the plaintiff and garnishee defendant to appear before him at a time therein mentioned, not to exceed three days from date of such order, to hear and determine the garnishee action. Said order shall be served upon said parties in the manner provided by law for the original garnishee summons at least forty-eight hours before such hearing. Upon return of said process showing such service, the justice may proceed to hear and determine such action with the same force

and effect as though it were the return day of the principal action, but may, in his discretion, where justice requires it, continue the matter to such time as may be necessary but not beyond the time of return in the principal action. Any further adjournment shall be subject to the same provisions as a second adjournment in civil cases before a justice of the peace.

**304.27 Garnishee to be examined.** The garnishee may appear in person or by agent or attorney; the affidavit aforesaid shall be deemed a sufficient complaint in the action; and the garnishee may answer the matters alleged in the affidavit either orally or by written answer, duly verified and filed with the papers in the case, and if the answer is oral it shall be reduced to writing by the justice and be so filed; the action may be adjourned by the garnishee as in case of a second adjournment in justice's courts in civil actions.

**304.28 Surety to discharge garnishee; secondary liability.** (1) At any time after the service of a summons in garnishment, either before or after judgment in the main action, the principal defendant may, if he desire, offer in writing to permit the plaintiff to take judgment against him, and any surety or sureties who shall agree thereto in writing and who shall justify in twice the amount of the plaintiff's claim and who shall be approved by the justice, immediately upon the entry of judgment for the plaintiff in the main action is directed if he can find sufficient property of the principal to satisfy the same, and also the accrued costs of said garnishee action up to the time of making such offer of judgment and said garnishee may be then discharged from all further liability as garnishee therein.

(2) Whenever judgment shall be rendered against the defendant mentioned in the preceding subsection, such judgment shall be entered against the defendant and his surety or sureties jointly; but it shall not be collected of the sureties by the officer to whom the execution is directed if he can find sufficient property of the principal to satisfy the same, and the party issuing the execution shall indorse a direction thereon to that effect.

**304.29 Trial if garnishee's answer unsatisfactory; appeal.** If the plaintiff shall not be satisfied with the answer of the garnishee or if either party shall desire a trial the justice shall enter that fact on his docket and the case shall forthwith be proceeded with and tried upon the issue formed by the affidavit and answer, as in other actions commenced by summons, and if upon the trial of any such issue property or effects, not by law exempt from seizure upon attachment or execution, shall be found in the hands of the garnishee or it shall be found that he was indebted to the defendant and that such indebtedness was not exempt, the justice or jury shall assess the value thereof and the garnishee shall hold the same subject to the further order of the justice; but if, upon such trial, it shall be found that the property or effects in the hands of the garnishee or his indebtedness to the defendant is exempt the justice shall forthwith enter an order in his docket discharging the garnishee; and if it shall be found that any part of such property or effects or such indebtedness is exempt he shall enter an order in his docket discharging the garnishee from all liability to the plaintiff as to the property or effects or the amount of indebtedness so found to be exempt. Either party may appeal from such finding and order to the court to which an appeal might be taken from a judgment in the action, but such appeal must be taken separately from any appeal from such judgment.

**304.30 Defendant's defense; garnishee may plead exemption.** The defendant in the original action may appear and defend the proceedings against the garnishee upon the ground that the indebtedness of the garnishee or any property held by him is exempt from execution against such defendant or for any other reason is not liable to garnishment, or upon any ground upon which a garnishee might defend the same, and may participate in the trial of any issue between the plaintiff and the garnishee for the protection of his interests. And the garnishee may, at his option, defend the principal action for the defendant, if the latter does not appear therein; but such defense by a garnishee shall not preclude the defendant from any right he may have to a new trial in such action under the provisions of sections 302.31 and 302.32. And the garnishee, if he has property in his possession or under his control belonging to the defendant, may further answer that said property is exempt from execution, but said garnishee shall not be compelled to set up said exemption and shall in no manner be held liable to said defendant or to any other person for failure to set up such exemption.

**304.31 Stay if other action pending against garnishee.** If the answer of the garnishee shall disclose that he has money, property or effects in his possession or under his control belonging to the defendant or is indebted to him and that said money, property, effects or indebtedness are held and are subject to a garnishee proceeding or proceedings or a warrant or warrants of attachment issued by any court within this state or any court of the United States, and shall, on making such answer, request a stay of proceedings for a definite period, not exceeding one year, until such proceeding or proceedings are disposed

of, the justice shall enter an order to that effect and shall adjourn the garnishee action until the day to which such proceedings are stayed. The plaintiff may, however, on not less than six days' written notice to the garnishee, apply to the justice to have said stay of proceedings vacated, and on making satisfactory proof to the justice that the proceedings on account of which the stay was granted have been disposed of, said justice may vacate the same and proceed to a further examination of the garnishee, and if such examination shall show that the garnishee is indebted or has money, property or effects in his possession and not subject to such prior proceedings, and not exempt from execution, the justice shall proceed as to the same as in other cases.

**304.32 Payment into court or deposit of property; adjournment; costs.** (1) If the answer of the garnishee shall disclose that he is indebted to or has money, property or effects belonging to the defendant in his possession, and that the same are not exempt from execution and are claimed by some person or persons not a party to the action, giving his or their names and post-office address, if possible, and that he is in doubt as to whom said money, property or effects should be delivered or such debt paid, the justice may order him to pay the money into court or deliver said money, property or effects to the court or some officer designated thereby, and give said garnishee a receipt therefor which shall be a full discharge of all liability on his part. The justice shall thereupon cause a notice setting forth the facts stated in said answer to be served upon the person or persons mentioned therein as claiming said debt, money, property or effects, which notice shall be served upon him or them in the manner provided for the service of a garnishee summons, and which shall direct said person or persons to appear before the justice who has jurisdiction of the garnishee action and defend his or their rights thereto. Said justice shall thereupon adjourn said action to such time, not exceeding ninety days in all, as may seem to him fit, and shall make said notice returnable at the time and place to which he has so adjourned. If such person so summoned shall appear and claim the said property, but fail to establish his right thereto, costs shall be awarded against him as in other cases.

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

.... County, } In Justice's Court.  
.....

.....  
Justice of the Peace.

To .... :

You are hereby notified that in an action of garnishment in said court, between .... , plaintiff, and .... , garnishee, the said garnishee states in his answer that you claim from him certain moneys, property or effects in question in said action, and that he is in doubt as to whom the same belong. Unless you appear in said court on the .... day of ...., 19.., at .... o'clock in the .... noon and prove your claim to the same, the said court will proceed to judgment as the rights of the parties shall appear. ....

Plaintiff.

(3) Such publication may be proved by the affidavit of the publisher or foreman of the newspaper or such posting by the return of an officer or affidavit of any person who would be a competent witness in the case. In case the said person so alleged to claim such property, moneys or effects, does not appear, the same shall not be paid or delivered to the plaintiff, nor any part thereof, unless he shall procure an undertaking to be entered upon the docket signed by a surety to be approved by the justice, substantially in the following form:

.... County, } In Justice's Court.  
.....

.....  
Justice of the Peace.

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

Now I do undertake, pursuant to the statute, that the said plaintiff will pay all damages not exceeding three hundred dollars, which the said absent claimant may sustain by reason of said judgment.

Dated ...., 19...

.....  
Surety.

(4) Such absent claimant may bring an action on such undertaking, and if he shall sub-



stantiate his title to the property he shall be entitled to recover thereon; provided an action be brought on said bond within one year from the date of judgment in the action.

**304.33 Costs to garnishee.** If in the action instituted against the garnishee the plaintiff shall be nonsuited or discontinue his action, or if upon the answer and trial of the issue between the plaintiff and garnishee no property or effects shall be found in the hands of the garnishee or nothing shall be found due from the garnishee to the defendant, or if in the action against the principal defendant the plaintiff shall be nonsuited or discontinue his action, or if on the trial in such action nothing shall be found due from the defendant to the plaintiff, then in each of these cases the garnishee shall recover costs against the plaintiff and no such costs shall be paid by the defendant.

**304.34 Proceedings when garnishee liable; his costs.** (1) If the plaintiff recover against the defendant in the original action and the answer of the garnishee, when no issue is made thereon, or the finding of the court or jury on an issue show that the garnishee at the time of the service of the summons had property in his possession belonging to the defendant or that he was indebted to him the justice shall enter an order in his docket requiring the garnishee, within ten days, to pay or deliver to the justice such property or the amount of such indebtedness, or so much thereof as may be necessary to satisfy such judgment, with costs thereof, and the costs of the garnishee proceedings; or if it appears from such answer or finding that the garnishee is to pay or deliver to the defendant any money or property in any other manner or at any other time than immediately and at the time of the service of the summons, the same belonging to the defendant, then the order of the justice shall be that such payment or delivery be so made to the justice for the benefit of the plaintiff.

(2) If such garnishee shall pay such indebtedness and deliver such property as directed by such order the costs of the garnishee shall be paid out of the money or property received by the justice, unless the garnishee upon an issue joined with him by the plaintiff shall have been held liable in a greater amount of property or indebtedness than was disclosed in his answer, in which case he shall not have costs; and all property and effects, except money, delivered to the justice shall be by him ordered to be sold on the execution against the defendant.

**304.35 Judgment if garnishee fails to pay or deliver property; stay of proceedings.** If the garnishee do not deliver over the property or pay the money due or found in his hands and belonging to defendant as provided in section 304.34 judgment shall forthwith be given against him as follows:

(1) If the value of the property in the possession of the garnishee, as found by the justice or jury, shall be less or equal to the judgment against the principal defendant for damages and costs, then for the value as so found.

(2) If the value of the property in the possession of the garnishee, as found by the justice or jury, shall exceed the amount of the judgment for damages and costs against the principal defendant, then for the amount of the judgment for damages and costs against the principal defendant, with the costs of suit in the action in which he is a garnishee, not exceeding the value as found by the justice or jury. The plaintiff at his election, instead of taking judgment as aforesaid for the value as so found against the garnishee, may enforce the delivery of the property found in his hands by proceedings as for a contempt in case of the garnishee's refusal to deliver the property found in his possession pursuant to the order of the justice requiring such delivery. An appeal may be taken from any order of the justice directing the delivery of the property or the payment of money in the garnishee's possession the same as if from a judgment. Proceedings under said order may be stayed during the pendency of the appeal by the execution by the defendant of an undertaking, with one or more sureties, to be approved by the justice, to the effect that if the order appealed from shall be affirmed or the appeal dismissed, the appellant will pay to the plaintiff the value of the property mentioned in said order, with interest, and the costs of the plaintiff on the appeal or, that, in either such event, he will deliver such property to the plaintiff and pay interest on the value thereof and such costs; but whenever an appeal shall be taken by a defendant from a judgment given against him and in favor of the plaintiff in the principal suit, and execution on such judgment shall be stayed by the filing with the proper justice of an undertaking for that purpose, approved as required by law, all proceedings in any garnishee proceeding in aid of such principal suit and upon any order or judgment which may have been given or made in such garnishee proceeding, shall be thereby also stayed until the final determination of such principal suit or such appeal; further proceedings in such garnishee action may be had upon filing a certified copy of the judgment in the original action with the justice of the peace before whom the same is pending and three days' notice to the opposite party.

**304.36 Final judgment against garnishee.** No final judgment shall be rendered against the garnishee until final judgment be rendered against the defendant in the original

action; but no judgment shall be rendered against a garnishee or any money or property be required to be delivered by him to the justice upon any liability arising out of either of the causes mentioned in section 267.18.

**304.37 Money may be paid into court.** In all cases where a judgment shall be rendered against the garnishee in a court of record, or in a court not of record, the garnishee may pay into the court in which such judgment was rendered, the amount of such judgment, and take a receipt from the clerk of such court of record, or a receipt from the judge or justice of such court not of record, therefor, which shall be a full discharge and satisfaction of the liability of such garnishee on such judgment and on the payment of the amount of such judgment into such court, the liability of such garnishee shall cease, except as to such greater sum as may be found due unto the plaintiff upon an appeal or a retrial of the action.

**304.38 Proceedings on default of garnishee.** When a garnishee shall fail to appear or, appearing, shall fail to make full answer touching his liability, the justice shall enter such fact in his docket and he shall be adjudged to be indebted to the defendant; and if judgment shall be rendered in favor of the plaintiff such judgment shall be entered against such garnishee and shall include all costs in the garnishee proceedings, and no such costs shall be paid by the defendant; or, on demand of the plaintiff, he may issue a warrant for the arrest of the garnishee, which shall be served in the same manner as warrants issued by justices of the peace in civil actions founded on tort, and the garnishee shall be held thereon until he shall make full and direct answers touching his liability; and the justice may continue the cause to some other day, if necessary, for further proceedings.

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

**304.40 Judgment a bar.** In all actions brought by the defendant against the garnishee for the recovery of any property, credits, money, indebtedness or effects delivered up or paid on the order of the justice or on any judgment rendered under this chapter, except for costs taxed against the garnishee, such order or judgment may be pleaded in bar and shall be conclusive between such parties and those claiming under them, as in other cases.