its taking and detention. Hence, if a traverse is sustained, and the attached property has been destroyed, the plaintiff is liable for its full value. Stanley v. Carey, 89 W 410, 62 NW 188.

A formal pleading on the claim for damages for the property attached is not required. The procedure is left to the sound discretion of the trial court, but the better practice is to try the main issue first and then if the defendant succeeds to try the claim for damages. Union Nat. Bank v. Cross, 100 W 174, 75 NW 992.

Where a sheriff has attached property in his possession and the possession thereof is lost through any cause it is his duty to exercise reasonable care and diligence to repossess himself of it. Phillips v. Eggert, 145 W 43, 129 NW 654.

266.22 History: R. S. 1849 c. 112 s. 27; R. S. 1858 c. 130 s. 30, 31, 56; 1859 c. 101; R. S. 1878 s. 2748; 1881 c. 157; Ann. Stats. 1889 s. 2748; Stats. 1898 s. 2748; 1925 c. 4; Stats. 1925 s. 266.22; 1935 c. 541 s. 91.

Sec. 2748, R. S. 1878, as amended, is wholly irreconcilable with the notion that the lien of an attachment on real estate, where judgment has been rendered against plaintiff on the merits, continues during the time allowed for an appeal from the judgment, without any supersedeas bond or undertaking of any sort being given and without any order of the court made thereupon continuing the attachment. Meloy v. Orton, 42 F 513.

If the defendant in the attachment proceedings obtains judgment on the merits the continuance of the lien, pending an appeal, is not affected by the failure of the clerk of the court to perform the duty imposed by the statute. Meloy v. Orton, 42 F 513.

266.23 History: 1856 c. 120 s. 145; R. S. 1858 c. 130 s. 54; 1859 c. 101; R. S. 1878 s. 2749; Stats. 1898 s. 2749; 1925 c. 4; Stats. 1925 s. 266.23.

266.24 History: R. S. 1858 c. 130 s. 55; R. S. 1878 s. 2750; Stats. 1898 s. 2750; 1925 c. 4; Stats. 1925 s. 266.24.

266.25 History: R. S. 1858 c. 130 s. 60; R. S. 1878 s. 2751; Stats. 1898 s. 2751; 1925 c. 4; Stats. 1925 s. 266.25; 1935 c. 541 s. 92.

266.26 History: Stats. 1898 s. 2751a; 1925 c. 4; Stats. 1925 s. 266.26.

CHAPTER 267.

Garnishment.

Revisers' Note, 1878: This chapter is new. The practice in garnishment is expensive, inconvenient and variable. It is desirable that it should be cheap, easy and certain. The effort is made to prescribe a practice which it is hoped will afford the desired ends.

The statute in this state originally provided garnishment as a remedy in aid of attachment only. It is a sort of attachment in itself. Then it was extended to aid an execution, and subsequently it was provided as an auxiliary to an action independently of an attachment; thus making it a mere provisional remedy. It has been thought best to treat garnishment before execution issued as a provisional remedy, distinct from attachment. So provided it may be taken out either with or without a writ of attachment, and if such a writ be also issued, it no further affects the garnishment than that the officer having the writ may take any property discovered while he has the writ. This renders entirely unnecesssary any provision for garnishment on attachment.

Provisions for garnishment on an execution are combined with this chapter because with very slight modification the same practice can be applied to both, and the advantages of presenting the subject in one chapter outweigh the slight disturbance in analysis.

In providing the practice it is believed the system of no particular state is followed; but the recommendation made is of a system combined from the different systems.

Garnishment is not only an attachment of a debt due; it becomes also an action in which the plaintiff vicariously prosecutes the garnishee upon a demand of his defendant against the garnishee, and therefore must have the capacity of a civil action, and, as a result, all parties ought to be bound by the judgment and be brought in as parties competent to act.

The idea upon which the chapter proceeds combines the motion of attaching a debt with that of collecting a debt, and throws the notice of warning to the debtor whose debt is attached into a form equally adapted to the purpose of an adversary action against him, after the fashion of the New England trustee process, in part. At the same time it must be preceded by an affidavit according to the present condition of our law, and the summons is not the same as that by which the principal action is commenced, and the proceeding takes the form of a provisional remedy in the beginning. Should the plaintiff be dissatisfied and an issue be formed, the proceeding readily becomes an action in which the defendant may be said to be compelled to prosecute the garnishee for the use of the plaintiff, and the judgment may completely dispose of the controversy between them. Further explanation is made with the sections.

267.01 History: R. S. 1878 s. 2752; Stats. 1898 s. 2752; 1909 c. 276; Stats. 1911 s. 2752, 2752m; 1925 c. 4; Stats. 1925 s. 267.01, 267.02; 1935 c. 541 s. 93, 94; Stats. 1935 s. 267.01; 1939 c. 513 s. 51; Sup. Ct. Order, 232 W v; 1965 c. 507; 1969 c. 127.

Revisor's Note, 1935: The revision of chapter 267 is to make it in form, which it is in fact, i. e. an action. (3) is from 267.03 (1). (Bill 50-S, s. 93)

Legislative Council Note, 1969: Section 1 [as to (5), (6) and (7)] incorporates the federal definition for "earnings" and "disposable earnings" into Wisconsin law from P.L. 90-321. For the purposes of garnishment actions, employer contributions to pension, welfare or vacation trust funds required to be paid pursuant to the terms of an employment contract are not "disposable earnings". If a trust fund provides that its funds are not subject to garnishment, no right of garnishment is created by this section. Sub. (7) defines the "federal minimum hourly wage" for this statute. (Bill 72-A, which was identical to Bill 315-S)

Fraudulent assignment of a debtor's interest in a contract may be treated as a nullity and the parties who, by the assignment, would be indebted to the assignee may be garnished. Prentiss v. Danaher, 20 W 311.

Plaintiff need not inquire of the original defendant whether he has property subject to execution sufficient to pay his claim. Orton v. Noonon, 27 W 572.

Money due a judgment debtor from the purchaser of his homestead, as a part of the consideration therefor, which is designed to be used in the purchase of another homestead, is exempt from garnishment. Watkins v. Blatschinski, 40 W 347.

It is not a defense that the debt of the garnishee is payable in another state. Commercial Nat. Bank v. Chicago, M. & St. P. R. Co. 45 W 172.

The execution must be valid. Kentzler v. Chicago, M. & St. P. R. Co. 47 W 641, 3 NW 369.

One who holds property of a debtor merely as an agent of a municipal corporation is not subject to garnishment. Merrell v. Campbell, 49 W 535, 5 NW 912.

The disjunctive "or" may be used in alleging that defendant is indebted to or has property, etc. Russell v. Ralph, 53 W 328, 10 NW 518.

An executor or administrator is not subject to garnishment before a final order for distribution is made. J. I. Case T. M. Co. v. Miracle, 54 W 295, 11 NW 580.

A judgment creditor may maintain proceedings against the vendee in a fraudulent conveyance of a debtor's property, notwithstanding that after the commencement of proceedings a second execution upon his judgment has been levied upon the property included in the conveyance. Where one has received by such conveyance property of a judgment debtor in excess of the debt to the plaintiff, personal judgment against the garnishee for the amount of such debt is proper. Sutton v. Hasey, 58 W 556, 17 NW 416.

The remedy by garnishment is unavailing to compel a debtor to apply his property held within a foreign jurisdiction, to the payment of his debts within this state. Bates v. Chicago, M. & St. P. R. Co. 60 W 296, 19 NW 72.

A common carrier is not liable as garnishee for goods in transit when process is served. Bates v. Chicago, M. & St. P. R. Co. 60 W 296, 19 NW 72.

The record on appeal from a judgment did not contain the affidavit nor the garnishee's formal answer, but it appeared that at the trial they joined in their defense and that their testimony disclosed a joint liability. They were not entitled to judgment on the ground that the affidavit did not charge them with being jointly liable. Goll v. Hubbell, 61 W 293, 20 NW 674, 21 NW 288.

A mortgagee is not liable to garnishment by creditors of a mortgagor. Farwell v. Wilmarth, 65 W 160, 26 NW 548.

Garnishment may be resorted to to enforce a laborer's lien. O'Reilly v. Milwaukee & N. R. Co. 68 W 212, 31 NW 485.

Drafts and notes may be garnished. La Crosse Nat. Bank v. Wilson, 74 W 391, 43 NW 153.

The validity of garnishment proceedings does not depend upon the regularity of an attachment. Frisk v. Reigelman, 75 W 499, 43 NW 1117, 44 NW 766.

So long as the owner of property has the right to withdraw it from the possession of the person who is garnished the latter is not liable as garnishee. Gleason v. South Milwaukee Nat. Bank, 89 W 534, 62 NW 519.

A receiver appointed in an action to wind up and administer an insolvent partnership's affairs cannot be garnished by firm creditors on account of property or funds in his hands as receiver, without leave of the court appointing him. Blum v. Van Vechten, 92 W 378, 66 NW 507.

The agent of a chattel mortgagee who has possession of the mortgaged property by virtue of the mortgage and is holding it for his principal is not subject to garnishment by a creditor of the mortgagor, though the mortgage be void as to such creditor; especially where the possession of the property is surrendered to the mortgagee upon service of the garnishment. Gore v. Brucker, 94 W 65, 68 NW 396.

An officer or agent of a private corporation may be garnished by its creditors in respect to money or property in his hands belonging to it. Mayo v. Hansen, 94 W 610, 69 NW 344.

The indebtedness of a foreign insurance company to a resident of this state upon a judgment in his favor rendered by a court of this state cannot be reached by garnishment process served on an agent of such company without this state and without the state of the domicile of the corporation. Reiner v. Hurlbut, 81 W 24, 50 NW 783; Morawetz v. Sun Ins. Office, 96 W 175, 71 NW 109.

Where a foreign insurance company is doing business in this state and was indebted to a nonresident on account of a loss occurring in another state, a resident of this state could not reach the amount of such indebtedness by garnishment. Morawetz v. Sun Ins. Office, 96 W 175, 71 NW 109.

A transfer of property by the judgment debtor to the garnishee may be attacked on the ground of fraud in a garnishment proceeding in aid of an execution. Mace v. Roberts, 97 W 199, 72 NW 866.

In a garnishment proceeding in aid of an execution the court takes judicial notice of the proceeding and judgment before it in the original action; and an objection that the judgment and execution were not offered in evidence is too late when first made on appeal. Mace v. Roberts, 97 W 199, 72 NW 866.

Plaintiffs filed a claim in voluntary assignment proceedings without knowledge of their invalidity. Subsequently they commenced garnishment against the assignee. The assignee was allowed by the court to supply the defect in the assignment proceedings. By becoming parties to the assignment proceedings and remaining such for a considerable length of time, the plaintiffs were estopped from maintaining garnishment. Keith v. Arthur, 98 W 189, 73 NW 999.

The service of garnishee process creates an equitable lien upon property of the principal defendant in the hands of the garnishee. The plaintiff may hold such property for the satisfaction of his claim and may follow it into the

hands of those who may purchase the same from the garnishee with notice of the situation unless the lien be waived by plaintiff's consent. A judgment for the garnishee extinguishes the lien and protects the garnishee and those dealing with him pending an appeal from the judgment unless the lien be continued according to law. If plaintiff elects to take a mere money judgment against the garnishee such election discharges the property from the lien. Maxwell v. Bank of New Richmond, 101 W 286, 77 NW 149.

In the absence of statute no judgment for damages by reason of garnishment is authorized in favor of the defendant against the plaintiff. Veitch v. Cebell, 105 W 260, 81 NW 411.

A note and mortgage assigned by a husband to wife in fraud of creditors were placed by the wife in a bank for collection and the bank received a check in payment. The bank was liable as garnishee to a creditor of the husband, the bank having notice that the assignment was void. Eau Claire Nat. Bank v. Chippewa Valley Bank, 124 W 520, 102 NW 1068.

A nonresident alien, seeking to recover on a transitory cause of action which accrued in a foreign country may invoke the remedy of garnishment in our courts only under the principles of comity. As between such alien and a creditor resident in this state, both seeking to seize property of the debtor by garnishment, the claim of the resident is to be preferred. Disconto Gesellschaft v. Umbreit, 127 W 651, 106 NW 821.

Property of one of 2 judgment debtors which cannot be reached by levy may be reached by garnishment and applied on the judgment. Chase v. Doxtater, 147 W 581, 132 NW 904.

The purpose of the action is not limited to a recovery of liquidated, but may extend to the recovery of unliquidated, damages. Kindinger v. Behnke, 150 W 557, 137 NW 777.

When money and a note have been procured by fraud, the tort may be waived and a recovery had in an action upon implied contract. Scheuer v. R. J. Schwab & Sons Co. 170 W 630, 176 NW 75.

Although the relation between a bank and its depositors is that of debtor and creditor, if money deposited in the name of a depositor in fact and in law belongs to another (as in the case of a deposit by an agent of his principal's funds), the indebtedness cannot be reached by garnishment against the agent. Lambert v. State Bank, 179 W 359, 191 NW 555.

Proceeding to trial without issue joined but without objection, is a waiver of the failure to join issue, but the garnishees did not, by being examined under sec. 4068, Stats. 1923, waive their objection that issue had not been joined, where garnishees stated at the close of the testimony that it was taken under objection, to which the court expressly, and the plaintiff tacitly, consented. Lehner v. Rudinger, 185 W 464, 201 NW 748.

A garnishment is an action by the defendant in the name of the plaintiff against the garnishee. It is an equitable proceeding. Commercial I. Trust v. Wm. Frankfurth H. Co. 179 W 21, 190 NW 1004; Lehner v. Rudinger, 185 W 464, 201 NW 748.

Where the proceeds of fire insurance policies under the terms of a trust deed are security for the restoration of mortgaged buildings and the mortgage debt, restoration of the buildings by the mortgagor at his own expense does not subject such proceeds to the claims of creditors. Connors v. Aaron, 207 W 115, 240 NW 821.

The amount payable to the widow under an insurance policy on her deceased husband's life is subject to garnishment for her debts; especially in view of 6.015, Stats. 1931, granting to women the same rights and privileges as men in the making of contracts. (Ellison v. Straw, 116 W 207, 92 NW 1094, distinguished, and language in the opinion therein in seeming conflict herewith withdrawn.) First Wisconsin Nat. Bank v. Strelitz, 209 W 335, 245 NW 74.

The mortgagor's sale and delivery of the mortgaged crop to the canning company, with the understanding that he should turn over the proceeds to the mortgagee, did not substitute the mortgagor's personal promise for the mortgage security or waive the mortgage lien, but operated as an equitable assignment of the proceeds of the sale and title to the proceeds to the extent of the amount secured by mortgage was in the mortgagee; hence such proceeds were not subject to garnishment by the mortgagor's creditors. Middleton L. & F. Co. v. Kosanke, 216 W 90, 256 NW 633.

Where a wife conveyed all of her separate property to discharge a debt of her husband for which she was in no way liable, and the wife was thereby rendered unable to pay her own existing debts, the conveyance was not for a "fair consideration," and she was thereby rendered "insolvent," so that the conveyance was fraudulent as to her creditors without regard to whether there was fraudulent intent in making the conveyance. Her creditors could reach the property by garnishment. Neumeyer v. Weinberger, 236 W 534, 295 NW 775.

An executor or administrator, with respect to money or property in his hands in his representative capacity, is not subject to garnishment in an action by a creditor against an heir or legatee, at least not before a final order for the distribution of the estate. The rule stated was not abrogated by any changes made in the garnishment statutes by ch. 541, Laws 1935. Olson v. Gilbertson, 239 W 241, 300 NW 918.

Where a garnishee action was brought in aid of an action on a mortgage note, and the action on the note was dismissed because of a pending action for foreclosure of the mortgage asking for a deficiency judgment, the garnishee action and the garnishee summons fell with the principal action, which was the action on the note, so that such garnishee summons would not sustain a garnishee action in the foreclosure action. Roberts v. Saukville Canning Co. 247 W 277, 19 NW (2d) 295.

In garnishment, if the cause of action alleged in the complaint in the principal action is not one for damages founded on contract, the defendant in the garnishment action is entitled to dismissal of the garnishment proceedings on making a proper motion therefor. The merits of the principal action will not ordinarily be inquired into on an application

to dismiss the garnishment action, further than to ascertain that there was a good-faith controversy involved; and if the complaint in the principal action purports to allege a cause of action for damages for breach of contract, a motion to quash or dismiss the garnishment action will not be granted on the ground that such complaint fails to state a cause of action, in the absence of any showing that a good-faith controversy does not exist. Chernin v. International Oil Co. 261 W 308, 52 NW (2d) 785.

Garnishment proceedings are special and in derogation of the common law, and the provisions of the statutes relating thereto must be strictly pursued in order to confer jurisdiction. Mahrle v. Engle, 261 W 485, 53 NW (2d) 176.

The filing of a judgment debtor's petition in bankruptcy and his adjudication as a bankrupt did not operate to divest the state circuit court of jurisdiction to proceed with the judgment creditor's garnishment action to the final step of ordering the creditor's judgment paid out of the money paid into court by the garnishees, the garnishment proceedings having been instituted more than 4 months prior to the bankruptcy proceedings. Elliott v. Regan, 274 W 298, 79 NW (2d) 657.

Garnishment is not a "cause of action," but is a statutory action available to parties when they have a cause of action; and there is only a single cause of action, which is the primary right of plaintiff to collect the debt and corresponding duty of principal defendant to pay it; and the scope of the prayer for relief cannot change it into more than one cause of action. Markman v. Becker, 6 W (2d) 438, 95 NW (2d) 233.

267.02 History: 1965 c. 507; Stats. 1965 s. 267.02; 1969 c. 127.

Legislative Council Note, 1969: This section abolishes wage garnishment before judgment. Section 267.02 (2) (b) and (c) establish procedures for substituted service in the principal action on the defendant's employer, when personal service cannot be made on a defendant. This section is limited to actions when garnishment is involved. Sub. (3) permits the plaintiff to proceed against other garnishees or the same one more than once, if he has reason to believe they subsequently have become liable. (Bill 72-A, which was identical to Bill 315-S)

Since garnishment is entirely statutory and was unknown to the common law, the right to commence such an action must be found within the provisions of the garnishment statute, and unless therein specifically authorized, such an action will not lie. A complaint in a garnishment action by a state court receiver was demurrable where the only material allegations set forth were that the garnishee defendant was indebted to and had property belonging to the person and corporations for which he had been appointed, and the relief sought was a judgment recognizing and adjudicating his interest as receiver of such assets, there being no averments that the receiver had met any of the statutory requirements for the commencement of a garnishment action. Moskowitz v. Mark, 41 W (2d) 87, 163 NW (2d) 175.

The tide does not run in the direction of liberal construction of garnishment statutes of any nature, nor in the direction of permitting procedural moves or tailoring of pleading to sustain otherwise invalid garnishment proceedings. Gerovac v. Hribar Trucking, Inc. 43 W (2d) 328, 168 NW (2d) 863.

267.04 History: R. S. 1878 s. 2754; Stats. 1898 s. 2754; 1925 c. 4; Stats. 1925 s. 267.04; 1935 c. 541 s. 94, 95; Stats. 1935 s. 267.02; 1955 c. 490; 1963 c. 517; 1965 c. 507; Stats. 1965 s. 267.04; 1969 c. 127, 253.

See note to sec. 2, art. VII, on judicial power generally, citing Family Finance Corp. v. Sniadach, 37 W (2d) 163, 154 NW (2d) 259.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing Sniadach v. Family Finance Corp. 395 US 337.

The garnishee summons form specified in 267.04, Stats. 1967, must be used in garnishment actions commenced in the small claims branch of county court. 57 Atty. Gen. 147.

267.05 History: R. S. 1849 c. 112 s. 32; R. S. 1858 c. 130 s. 34; 1862 c. 249 s. 1; 1875 c. 57; R. S. 1878 s. 2753; 1881 c. 86 s. 1; 1885 c. 286; Ann. Stats. 1889 s. 2753; Stats. 1898 s. 2753; 1925 c. 4; Stats. 1925 s. 267.03; 1935 c. 541 s. 96; 1965 c. 507; Stats. 1965 s. 267.05; 1969 c. 127.

Action on a mortgage note is an "action to recover damages on contract." Cavadini v. Larson, 211 W 200, 248 NW 209.

267.06 History: 1927 c. 367 s. 2; Stats. 1927 s. 267.22; 1935 c. 541 s. 95, 97; Stats. 1935 s. 267.04; 1965 c. 507; Stats. 1965 s. 267.06.

267.07 History: 1862 c. 249 s. 1; 1871 c. 161 s. 1; 1875 c. 57 s. 34; R. S. 1878 s. 2756; Stats. 1898 s. 2756; 1925 c. 4; Stats. 1925 s. 267.06; 1935 c. 541 s. 99; 1959 c. 226; 1965 c. 507; Stats. 1965 s. 267.07.

Service is waived by a voluntary appearance. Everdell v. Sheboygan & F. du L. R. Co. 41 W 395.

If service is made upon the officer of a corporation who has not in his actual possession the property sought to be reached, it being in the possession of some other officer or employe of the company, who delivers the property to a person authorized to receive it before the officer served can, with reasonable diligence, notify him in whose possession the property is, so that its possession may be retained, the corporation is not liable as garnishee. Bates v. Chicago, M. & St. P. R. Co. 60 W 296, 19 NW 72.

Service on the principal defendant is not a prerequisite of jurisdiction. It is merely a notice in a proceeding in rem. Jurisdiction of the res is acquired by serving the garnishee. Winner v. Hoyt, 68 W 278, 32 NW 128.

Unless service is made on the defendant as the statute prescribes or the proof of service on the garnishee shows that the former could not be served in this state, the service on the garnishee is void from the beginning, and the question of jurisdiction may be raised by a creditor who has obtained an interest in or lien upon the property by subsequent garnishment proceedings. Globe M. Co. v. Boynton, 87 W 619, 59 NW 132; Smith, Thorndike & Brown Co. v. Mutual Fire Ins. Co. 110 W 602, 86 NW 241.

The sheriff, serving a garnishee summons, was not the agent of the judgment creditor, in the sense that the latter was responsible for the sheriff's statement that, if the garnishee did not owe the employe, it need not answer the summons. Plumbers' W. Co. v. Merchants' C. Bureau, 199 W 446, 226 NW 303.

Where the return of a sheriff who had served a summons on the garnishee made no reference to the service of a garnishee summons on the defendant, and did not certify that such service could not be made within the state, such defect in the return operated to deprive the court of jurisdiction; and the facts required by the statute to be shown by the proof of service on the garnishee could not be made to appear otherwise, as by a subsequent affidavit of the sheriff that he had used due diligence to find the defendant. As against a depositor, a garnishee bank was not protected by the payment of a deposit into court pursuant to a judgment rendered for garnishment plaintiffs, nor by a judgment rendered against the deposit in a subsequent action by the same plaintiffs, where the court had no jurisdiction in either action. Riley v. State Bank of De Pere, 223 W 16, 269 NW 722.

Where the garnishee summons and complaint were served on the garnishee but not on the principal defendant or his attorney, the failure of the sheriff's return to state that such latter service could not be made within the state rendered the service on the garnishee void and resulted in a loss of whatever jurisdiction the court had already acquired, and such loss of jurisdiction could not be repaired by amending the return. When the service on the garnishee became void, and the jurisdiction first acquired by the court was lost, and the principal defendant had died, the subsequent appearance and participation in the proceedings by the garnishee and the executrix of the principal defendant did not restore or revive whatever jurisdiction may have been lost, since at the time when such participation was alleged to confer jurisdiction the property of the principal defendant, by reason of his death, had already come into custodia legis and was not subject to garnishment. Mahrle v. Engle, 261 W 485, 53 NW (2d) 176.

267.08 History: 1965 c. 507; Stats. 1965 s. 267.08.

267.10 History: 1965 c. 507; Stats. 1965 s. 267.10.

267.11 History: R. S. 1878 s. 2760; Stats. 1898 s. 2760; 1925 c. 4; Stats. 1925 s. 267.09; 1935 c. 541 s. 102; 1955 c. 490; 1965 c. 507; Stats. 1965 s. 267.11; 1969 c. 127.

A garnishee may plead that property is exempt. Winterfield v. Milwaukee & St. P. R. Co. 29 W 589.

The court may require a garnishee to make his answer more definite, even before issue joined. Lusk v. Galloway, 52 W 164, 8 NW 608.

If the garnishee submits the question of his liability to the court, and the plaintiff does not take issue upon the truth of his answer, or move for judgment upon it, or consent to a dismissal of the proceedings the garnishee may move to have them dismissed. Selz v. First Nat. Bank, 55 W 225, 12 NW 433.

Where garnishee's answer was framed under secs. 2759 and 2760, R. S. 1878, combining with the denial of liability under the former section a statement of "all the facts and circumstances" concerning his liability or indebtedness under the latter, judgment for the plaintiffs was properly granted on motion, no issue being taken on the answer. Grever v. Culver, 84 W 295, 54 NW 585.

The interest of a pledgor or mortgagor over and above the amount necessary to pay a debt secured may be reached by garnishment in advance of sale. The fact that the indebtedness of the pledgee to the pledgor is contingent on the production of a surplus through a sale of the collateral does not preclude a creditor of the pledgor from proceeding in garnishment. Kiel Wooden Ware Co. v. Raeder, 242 W 62, 7 NW (2d) 414.

267.17, Stats. 1955, making a garnishee liable for debts due or to become due to the defendant, does not confer the right to set off an unmatured obligation against a matured one, nor does 267.09 (3), permitting a garnishee to claim a setoff, confer such a right. The allowance of equitable setoffs in favor of unmatured obligations is largely within the discretion of the trial court. Mattek v. Hoffmann, 272 W 503, 76 NW (2d) 300.

267.13 History: R. S. 1858 c. 130 s. 41, 42; 1862 c. 249 s. 7, 8; R. S. 1878 s. 2762; 1885 c. 314; Ann. Stats. 1889 s. 2762; Stats. 1898 s. 2762; 1925 c. 4; Stats. 1925 s. 267.11; 1927 c. 367 s. 1; 1935 c. 541 s. 104; 1951 c. 85; 1965 c. 507; Stats. 1965 s. 267.13; 1967 c. 188; 1969 c. 127.

Revisor's Note, 1935: The execution itself should command the sheriff to pay the money into court. Plaintiff's attorney might neglect to make an indorsement to that effect. (3) is intended to cover everything except debts due the defendant, 60 W 296. (Bill 50-S, s. 104)

Injunction may issue to restrain a garnishee from disposing of property in his hands which is claimed to be owned by the defendant. Malley v. Altman, 14 W 22; Almy v. Platt, 16 W 169.

Sec. 2762, R. S. 1878, construed in connection with sec. 3725, indicates that the personal property to be reached in the hands of a garnishee is such as would be subject to seizure by writ of attachment or execution if it was in possession of the principal debtor. Bates v. Chicago, M. & St. P. R. Co. 60 W 296, 19 NW 72.

267.14 History: R. S. 1878 s. 2763; Stats. 1898 s. 2763; 1925 c. 4; Stats. 1925 s. 267.12; 1935 c. 541 s. 105; 1965 c. 507; Stats. 1965 s. 267.14.

A motion for judgment by the plaintiff upon the garnishee's answer raises an issue of law like a demurrer to the answer in an ordinary action. Platt v. Sauk County Bank, 17 W 222.

Where the garnishee's answer shows his liability judgment may be rendered without notice to him. Meade v. Doe, 18 W 32.

After issue on the garnishee's answer and motion for judgment thereon denied, the plaintiff is still entitled to a trial of the issues of fact. Johann v. Rufener, 30 W 671.

If the principal defendant serves a proper

answer and no issue is formed thereon the irregularity is waived by his introducing evidence in support of his answer. Singer v. Townsend, 53 W 126, 10 NW 365.

In an action on a chattel mortgage note in which the purchasers of a junior mortgage that was first filed were garnished, the answer of the garnishees that they purchased in good faith was conclusive on the plaintiff, and the garnishees were entitled to judgment as a matter of course when plaintiff failed to take issue therewith. Lehner v. Rudinger, 185 W 464, 201 NW 748.

In a garnishment proceeding, the plaintiff, having elected not to traverse the garnishee's answer asserting acceptance of the debtor's order to give priority to another creditor, was bound to treat such order as accepted. Wisconsin F. & M. Co. v. Capital City C. Co. 198 W 154, 223 NW 446.

If neither the plaintiff nor the defendant denied allegations in the garnishee answer as to the existence of a lien in favor of the defendant's attorney, the answer was conclusive on the existence of such lien. Liberty v. Liberty, 226 W 136, 276 NW 121.

Where the plaintiff failed seasonably to take issue with the answer of the garnishee, granting an extension of time to file a reply was within the discretion of the court. Schmidt v. Blankschien, 235 W 586, 294 NW 49.

267.15 History: 1871 c. 161 s. 2; R. S. 1878 s. 2765; Stats. 1898 s. 2765; 1907 c. 161; 1925 c. 4; Stats. 1925 s. 267.14; 1935 c. 541 s. 107; 1965 c. 507; Stats. 1965 s. 267.15.

After the garnishee had answered and denied all liability it is not necessary for the judgment debtor to answer the same thing and his rights cannot be affected by his silence. The action is at issue as to him when issue is joined on the garnishee's answer. Mygatt v. Burton, 74 W 352, 43 NW 100.

A defendant who has made an assignment for the benefit of his creditors may move to set aside the garnishment proceedings. German-American Bank v. Butler-Mueller Co. 87 W 467, 58 NW 746.

In an action by a creditor to set aside as fraudulent a conveyance made by his debtor the judgment in favor of the former is evidence establishing the relationship of debtor and creditor between the parties and the amount of the indebtedness, and is conclusive evidence unless impeached for fraud or collusion or lack of jurisdiction or illegality in its entry. J. & H. Clasgens Co. v. Silber, 93 W 579, 67 NW 1122.

The principal defendant may appear specially in the garnishee action and move to dismiss. Schomberg H. L. Co. v. Engel, 114 W 273, 90 NW 177.

A party defendant may appeal from the judgment against the garnishee. Badger L. Co. v. Stern, 123 W 618, 101 NW 1093.

A defendant may defend against a garnishment of his debtor in aid of an execution issued against him on such grounds only as the garnishee may defend. Such a ground is a want of jurisdiction of the court to render judgment in the principal action. Schrader v. Gundeck, 171 W 425, 177 NW 572.

A principal defendant in garnishment proceedings though in default may participate in the trial of issues between the plaintiff and garnishee for the protection of his interests. Under 267.18, Stats. 1929, the maker of a negotiable note cannot be held liable in garnishment although the note is past due and the principal defendant is the original payee therein. Graham v. Zellers, 205 W 547, 238 NW 387.

267.16 History: R. S. 1849 c. 112 s. 36; R. S. 1858 c. 130 s. 43, 44, 50, 52, 53; 1862 c. 249 s. 9, 10, 14 to 16; 1871 c. 161 s. 3; R. S. 1878 s. 2766; Stats. 1898 s. 2766; 1925 c. 4; Stats. 1925 s. 267.15; 1935 c. 541 s. 108; 1965 c. 507; Stats. 1965 s. 267.16.

Judgment against one of several garnishees does not conclude others, unless all answered. Emmons v. Dow, 2 W 322.

A garnishee is not protected by a judgment against him if he fails to disclose knowledge of an assignment of a debt or claim of title to property in his hands. Adams v. Filer, 7 W 306.

A garnishee may be restrained from disposing of a debtor's property. Almy v. Platt, 16 W 169.

A fraudulent assignment of a debtor's property may be treated as a nullity. Prentiss v. Danaher, 20 W 311.

The plaintiff may be permitted to file a traverse of the garnishee's answer after expiration of the term next following that at which a judgment was obtained against the principal debtor. Lusk v. Galloway, 52 W 164, 8 NW 608.

The validity of a trust deed as against the grantor's creditors may be determined in garnishment proceedings against the trustee. First Nat. Bank v. Knowles, 67 W 373, 28 NW 225.

A judgment against a garnishee is erroneous if there is no valid judgment in the principal action. A garnishee defendant may avail himself of any defect in the proceedings in that action which invalidates the judgment. Streissguth v. Reigelman, 75 W 212, 43 NW 1116.

A default judgment against the defendant, of whom jurisdiction was not obtained, is not validated by his presence as a witness for the garnishees in an action against them. It is not an appearance in the action against the defendant. Beaupre v. Bringham, 79 W 436, 48 NW 596.

Where garnishment proceedings are not in aid of an execution or commenced at the time of the issuance of summons in the main action, the better practice is to introduce in evidence the record in the main action. O. L. Packard Co. v. Laev, 100 W 644, 76 NW 596.

The defendant has judgment against the plaintiff in a garnishee action where the principal action is discontinued and judgment thereon is entered. Cotzhausen v. H. W. Johns M. Co. 107 W 59, 82 NW 716.

The discharge of the garnishee by a court of competent jurisdiction releases the garnishment lien and protects the garnishee in disposing of the property after such judgment and prior to its reversal on appeal unless the lien be continued by proper order or stay. Stannard v. Youmans, 110 W 375, 85 NW 967.

267.17 History: 1866 c. 117; R. S. 1878 s.

2767; Stats. 1898 s. 2767; 1925 c. 4; Stats. 1925 s. 267.16; 1935 c. 541 s. 109; 1963 c. 343; 1965 c. 507; Stats. 1965 s. 267.17.

An action will not lie in favor of a garnishee against whom judgment has been rendered to compel plaintiff to interplead with plaintiff in a prior proceeding on the same cause of action. Danaher v. Prentiss, 22 W 311.

Objections to the answer of a party directed to interplead as a claimant of the fund in dispute are waived by going to trial. Kirby v. Corning, 54 W 599, 12 NW 69.

The statute giving the right of interpleader must be followed with substantial strictness or the party will fail of his remedy. John R. Davis L. Co. v. First Nat. Bank, 87 W 435, 58 NW 743.

The intervening claimant may recover damages for wrongful deprivation of possession, though the garnishment and the consequent tying up of the property were not begun or continued maliciously. The intervener stands before the court as a plaintiff and is governed by the usual rules of practice in actions. In lieu of intervening a claimant may maintain an independent action of replevin for the recovery of the property or for damages for the wrongful taking. Damages for mere detention are usually measured by interest and depreciation. Commercial I. Trust v. Wm. Frankfurth H. Co. 179 W 21, 190 NW 1004.

Property pledged to secure payment of certain obligations was subject to garnishment as to possible surplus. Wisconsin F. & M. Co. v. Capital City C. Co. 198 W 154, 223 NW 446.

267.18 History: R. S. 1849 c. 112 s. 33; R. S. 1858 c. 130 s. 35; 1862 c. 249 s. 2; R. S. 1878 s. 2768; 1881 c. 86 s. 2; Ann. Stats. 1889 s. 2768; Stats. 1898 s. 2768; 1925 c. 4; Stats. 1925 s. 267.17; 1935 c. 541 s. 110; 1965 c. 507; Stats. 1965 s. 267.18; 1969 c. 127.

Legislative Council Note, 1969: This section subjects to garnishment the earnings of the entire pay period in which the garnishment summons was served on the garnishee. (Bill 72-A, which was identical to Bill 315-S)

A contract to pay a workman in specific articles is not convertible into a money demand. Smith v. Davis, 1 W 447.

Under a void assignment an assignee is liable, though the property be converted into money. Keep v. Sanderson, 12 W 352.

Where a firm advances money with the understanding that it is to be paid by the first proceeds of the labor of the person to whom the advance is made and afterwards there is a change in the firm, and a person who was a member of both firms and authorized to settle the business of the old one made a purchase of such person for the new firm with the understanding that the sum due therefor was to be applied to the claim of the old firm, the new firm was not liable to garnishment. Cahill v. Bennett, 26 W 577.

One who retains part of the purchase money of lands bought from the attachment debtor as an indemnity against his own liability as surety upon an unpaid note of the debtor is exempt from garnishment. St. Louis v. Regenfuss, 28 W 144.

By the terms of a written contract between a railroad contractor and a subcontractor the former was authorized to pay the laborers employed by the subcontractor and to have the amounts paid such laborers deducted from the amount due under the contract; and this arrangement was accepted by the laborers. At the time of service of garnishee process upon the contractor by creditors of the subcontractor, the only unpaid obligations under the contract were certain wages owing to the laborers; and the contractor was not subject to garnishment. Balliet v. Scott, 32 W 174.

An unaccepted sight draft drawn by a bank here on a bank in another state and purchased with a debtor's funds may be garnished. Storm v. Cotzhausen, 38 W 139.

Money received by a railroad company for the transportation of freight and passengers, though collected for other connecting companies and credited to them on the books of the receiving company, is subject to garnishment. Everdell v. Sheboygan & F. du L. R. Co. 41 W 395.

The plaintiff may, if a creditor of the defendant at the time he executed a chattel mortgage to the garnishee, attack such mortgage as fraudulent. Healey v. Butler, 66 W 9, 27 NW 822.

When a garnishee is indebted to the defendant under contracts which are free from fraud the plaintiff occupies the same position as the defendant in respect to such contracts and can recover from the garnishee no more than the defendant could were he plaintiff. But if the contracts are fraudulent and plaintiff was a creditor when they were entered into, the relief is not so limited. Healey v. Butler, 66 W 9, 27 NW 822.

Garnishment of the owner of property as a debtor of the principal contractor, before the subcontractor had given notice of his claim for a lien, took precedence of such lien. Dorestan v. Krieg, 66 W 604, 29 NW 576.

The validity of a trust deed as against the creditors of the grantor may be determined in garnishment proceedings against the trustee. First Nat. Bank v. Knowles, 67 W 373, 28 NW 225.

The liability of the garnishee depends upon whether at the time of service the defendant's right to the money has become fixed and absolute. The debts to become due to the principal defendant relate only to such as the garnishee owes absolutely at the time of such service, though payable subsequently. Edwards v. Roepke, 74 W 571, 43 NW 554.

A mortgagee who has possession of goods under a mortgage to secure future advances is liable as garnishee to the extent of the mortgagor's interest in the goods over and above the advances made and liabilities incurred when he is summoned as garnishee. McCown v. Russell, 84 W 122, 54 NW 31.

A garnishee is not liable for any property belonging to the principal debtor which passed out of his possession or control prior to the service of the garnishee summons upon him. Jones v. Kosing, 92 W 55, 65 NW 732.

It could not have been the intention of the legislature that the mere possession of property by a party having no claim to hold it against the owner should render him liable as trustee, and thereby subject him to trouble and expense in answering to a claim

in which he has no interest. Such a construction of the statute would be prejudicial in very many cases, and cannot be admitted. Bates v. Chicago, M. & St. P. R. Co. 60 W 296, 19 NW 72; Gleason v. South Milwaukee Nat. Bank, 89 W 534, 62 NW 519; Gore v. Bruckner, 94 W 65, 68 NW 396.

A purchaser under a sale void as to creditors who is garnished in actions commenced against his vendor before the sale is liable for the proceeds of the property in his hands in excess of the sum due him. Carter, R. & H. Co. v. McDonald, 94 W 186, 68 NW 655.

Where the conveyance is void as to creditors, the property may be subject to garnishment, even though it could have been seized upon attachment or execution. Dahlman v. Greenwood, 99 W 163, 74 NW 215.

Where the bond given by the assignee for the benefit of creditors was void, the transfer was good as between the parties and the assignee could be garnished for the property so held by him. Stannard v. Youmans, 100 W 275, 75 NW 1002.

Where money was left by will to a certain person and if he was not heard from for 10 years it was to be divided between 2 other persons, those persons could not be garnished as the right of the first person to the money was not absolute. Evans v. Rector, 107 W 286, 83 NW 292.

Under an entire contract for the erection of a building by which the owner is to pay for labor and material as the work progresses and pay any balance to the contractor on completion of the building, nothing is due before the building is completed nor is there then any liability payable at a future time, subject to garnishment. Mundt v. Shabow, 120 W 303, 97 NW 897.

A bank which holds a note and mortgage for collection which were assigned in fraud of creditors, and which has received a check for the amount due on the same is subject to garnishment by a creditor of the assignor of such note. Eau Claire Nat. Bank v. Chippewa Valley Bank, 124 W 520, 102 NW 1068.

Where the defendant's attorneys had a lien on the fund which the plaintiff sought to reach in garnishment proceedings, the plaintiff's rights were subordinate to the lien and he was entitled only to the balance, but the attorneys not having been made parties to the action could not recover in the garnishment proceedings. Liberty v. Liberty, 226 W 136, 276 NW 121.

See note to 267.11, citing Mattek v. Hoffmann, 272 W 503, 76 NW (2d) 300.

267.19 History: R. S. 1858 c. 130 s. 53; 1862 c. 249 s. 17; R. S. 1878 s. 2769; Stats. 1898 s. 2769; 1925 c. 4; Stats. 1925 s. 267.18; 1935 c. 541 s. 111; 1945 c. 65 s. 29; Stats. 1945 s. 267.025, 267.18; 1965 c. 507; Stats. 1965 s. 267.19; 1969 c. 55 s. 113.

Revisers' Note, 1878: This section is written to define particularly certain points more or less in dispute, and substantially taken from the Massachusetts statute. It embraces section 53, chapter 130, R. S. 1858, and section 17, chapter 249, Laws 1862.

Revisor's Note, 1935: Garnishee summons is of no effect if served while the obligation is contingent. See Annotations, 74 W 571, 86 W 305, 89 W 96, 95 W 185. (Bill 50-S, s. 111)

If, pending an appeal from a judgment upon which the defendant has been garnished by a creditor of the plaintiff, such judgment is reversed and the judgment in the garnishment proceedings is perfected before another judgment is recovered by the principal defendant in the garnishment suit, such judgment, when recovered by him, is not affected by the garnishment. St. Joseph M. Co. v. Miller, 69 W 389, 34 NW 235.

A debt, in order to be subject to garnishment, must be owing absolutely at the time of the service of process. Where the question whether there will be any indebtedness or not depends entirely upon future contingencies the garnishee cannot be held. Edwards v. Roepke, 74 W 571, 43 NW 554; Vollmer v. Chicago & N. W. R. Co. 86 W 305, 56 NW 919.

An insurance company cannot be garnished after loss if the policy requires proof of loss and gives the option to rebuild the property, until after proofs are made and the time for exercising the option has expired. Dowling v. Lancashire Ins. Co. 89 W 96, 61 NW 76.

Where, on the entry of judgment against an employer in an action for damages by an injured employe, the indebtedness of an insurance company becomes absolute on a policy insuring the employer against liability for such injuries, such indebtedness may be garnished in a proceeding subsequently commenced by such employe against the insurer as garnishee of the employer. Hoven v. Employers' L. A. Corp. 93 W 201, 67 NW 46.

A verdict in favor of defendant in a tort action cannot be garnished; there is no debt or absolute liability before judgment. (Jones v. St. Onge, 67 W 520, 30 NW 927, distinguished.) Lehmann v. Farwell, 95 W 185, 70 NW 170.

An agent of the maker of notes and mortgages holding money to pay the same cannot be garnished. Hussa v. Sikorski, 101 W 131, 76 NW 1117.

Evidence that the garnishee was a stakeholder for the defendant on a wager and that the defendant had no beneficial interest therein, but had acted as agent for another in making the deposit, was admissible as against the objection that the garnishee could not prove an illegal transaction as a defense. Stadler v. Smith, 102 W 298, 78 NW 420.

A mortgagee in a chattel mortgage of partnership property to secure a bona fide debt owing to him by the partners individually is not subject to garnishment by the partnership creditors after he has sold the property and applied the proceeds upon the debt, even though the mortgage was fraudulent as to such creditors. Excelsior M. Co. v. Hanover, 102 W 309, 78 NW 737.

A check on a savings bank which did not under the rules of the bank transfer the fund until presentation of the proper depositor's book, the book being delivered to the payee before garnishment, is such a transfer of the fund as will be superior to a subsequent garnishment. Dillman v. Carlin, 105 W 14, 80 NW 932.

A fund in the custody of trustees and un-

der the control of a court cannot be reached by garnishment. Evans v. Rector, 107 W 286, 83 NW 292.

Money due from a vendor to a vendee upon rescission of an oral contract for the sale of real property is subject to garnishment. Aschermann v. Hart, 109 W 38, 85 NW 121.

Money deposited in a bank to be paid to the principal defendant upont delivery by him of an approved deed is not subject to garnishment prior to delivery of the deed. Becker v. Becker, 112 W 24, 87 NW 830.

Where a bank had issued a certificate of deposit (a negotiable instrument) payable to the defendant it could not be garnished. Disconto Gesellschaft v. Umbreit, 127 W 651, 106 NW 821.

The maker of a past due negotiable note is not liable in garnishment. Graham v. Zellers, 205 W 547, 238 NW 387.

Money deposited with a funeral director for a prearranged funeral is not subject to garnishment because the money is subject to the contingency that the services will be rendered unless the depositor demands a return of his money in his lifetime. Grant County Service Bureau v. Treweek, 19 W (2d) 548, 120 NW (2d) 634.

Money in the hands of a clerk of court is exempt from garnishment even after the court has entered an order directing payment to the principal defendant. Welch v. Fiber Glass Engineering, Inc. 31 W (2d) 143, 142 NW (2d) 203.

A check can be the subject of garnishment; the term "accepted" has a technical meaning and does not have reference to a mere holder. Skalecki v. Frederick, 31 W (2d) 496, 143 NW (2d) 520.

Garnishment; contingent interests. Beyer, 47 MLR 221.

267.20 History: R. S. 1858 c. 130 s. 44; 1862 c. 249 s. 11; R. S. 1878 s. 2770; Stats. 1898 s. 2770; 1925 c. 4; Stats. 1925 s. 267.19; 1935 c. 541 s. 112; 1965 c. 507; Stats. 1965 s. 267.20.

267.21 History: 1869 c. 53 s. 1 to 4; 1877 c. 237; R. S. 1878 s. 2771; 1885 c. 178; 1889 c. 229; Ann. Stats. 1889 s. 2771; Stats. 1898 s. 2771; 1913 c. 140; 1925 c. 4; Stats. 1925 s. 267.20; 1935 c. 541 s. 113; 1965 c. 507; Stats. 1965 s. 267.21.

Discontinuance of proceedings against one of 2 defendants does not change the liability of sureties. The contemplation of the statute is that the persons executing the undertaking shall be bound to the same extent as the garnishees discharged by virtue of it would have been bound. Sutro v. Bigelow, 31 W 527.

Where a defendant gives the undertaking he waives his right to move to dismiss the garnishment proceedings on the ground that he had property subject to execution sufficient to satisfy the claim. Thoen v. Harnstrom, 98 W 231, 73 NW 1011.

Where defendant gives an undertaking he is estopped from claiming that nothing was due at the time of the garnishment and the sureties are in the same position. Wilkinson v. United States F. & G. Co. 119 W 226, 96 NW 560.

An undertaking in release of garnishment will be liberally construed in furtherance of its purpose to protect the creditor. A surety in such undertaking is not prejudiced by an amendment of the complaint changing the action from express contract to quantum meruit. Gist v. Equitable S. Co. 161 W 79, 151 NW 382.

The right to procure the release of property by furnishing a bond is limited to the principal defendant. Commercial I. Trust v. Wm. Frankfurth H. Co. 179 W 21, 190 NW 1004.

A plaintiff who unsuccessfully questions the sufficiency of the sureties on defendants' undertaking to release a garnishment is not entitled to tax the costs of determining the sufficiency against the defendants. Schwade v. Van Bree, 214 W 250, 252 NW 702.

Where an action by a creditor against a debtor was dismissed for want of prosecution without notice and was reinstated within 10 days without notice, ultimately resulting in a judgment against the debtor, but the surety on the debtor's garnishment bond lost no rights, there was no change in its position and it suffered no harm because of the reinstatement, it was not released from liability on the bond by the order of dismissal. Zrimsek v. American Auto. Ins. Co. 8 W (2d) 1, 98 NW (2d) 383.

267.22 History: R. S. 1849 c. 112 s. 36; R. S. 1858 c. 130 s. 50; 1862 c. 249 s. 15; 1871 c. 161 s. 5; R. S. 1878 s. 2772; Stats. 1898 s. 2772; 1925 c. 4; Stats. 1925 s. 267.21; 1935 c. 541 s. 114; 1965 c. 507; Stats. 1965 s. 267.22.

If an assignee in garnishment proceedings in which the assignment is held void answers that he holds a sum of money in excess of the amount recovered by the plaintiff, but denies liability, costs should be awarded against him, and the amount is not limited by sec. 2921, R. S. 1878. T. T. Haydock C. Co. v. Pier, 78 W 579, 47 NW 945.

Where a garnishee denies liability and is successful upon a trial of the issue, he is entitled to recover costs. Dowling v. Fire Asso. of Philadelphia, 102 W 383, 78 NW 581.

Judgment for costs may be rendered in favor of a defendant and a garnishee jointly. Bank of Commerce v. Elliott, 109 W 648, 85 NW 417.

Where the garnishee made a full and truthful answer the taxation of costs against him was improper. Liberty v. Liberty, 226 W 136, 276 NW 121.

Whether the garnishee defendant had such possession and control of mortgaged goods as to subject them to garnishment was a question of fact, so that, if the trial court's finding thereon in favor of the garnishee defendant was correct, the judgment properly awarded costs to the garnishee defendant, without the plaintiff having been served with a notice of taxation of costs. Peterson Cutting Die Co. v. Bach Sales Co. 269 W 113, 68 NW (2d) 804.

267.23 History: 1945 c. 543; Stats. 1945 s. 267.22; 1947 c. 352, 472; 1959 c. 228 s. 66; 1961 c. 316; 1965 c. 507; Stats. 1965 s. 267.23; 1969 c. 127.

Comment of Advisory Committee, 1945: Section 267.22 * * * applies only to judgments in courts of record, whereas old 304.21 applies to judgments of all courts. A new 304.21 is created by this bill, to take care of justice court judgments. The provision in old 304.21

for sequestering funds due public contractors is made 289.535.

Notice should be taken of the fact that 267.22 and old 304.21 deal with priorities between assignees and garnishees. The crucial time under 267.22 (6) is the date of serving the garnishee summons. But under old 304.21 (3) the time turns on the date of the commencement of the main action. That goes too far back. This remedy, as originally enacted, required that the certified copy be filed within 30 days after entry of judgment. At present there is no such limitation of time for filing. The main action may have been begun in justice court and have been appealed from court to court so that final judgment may be years after the action was begun. In McDonald v. State the action against McDonald in which the state paid $530 was still pending on appeal and it was asserted by McDonald that the recipient of that money was financially irresponsible, so that McDonald, should he prevail in the end, would be unable to recover the $530. McDonald v. State, 203 W 649.

Old 304.21 provides that if the judgment debtor files an affidavit that an appeal has been or will be taken from the judgment, payment shall not be made until final determination of the appeal. In order to speed up the procedure, that provision is omitted from new 267.22 and 289.535.

(1) (b) preserves the second proviso of old 304.21 (2) which reads: "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."

(2) It seems obvious that provision should be made in this proceeding for service on the judgment debtor. Due process requires that he have notice. McDonald v. State, 203 W 649, 656; State ex rel. Anderton v. Sommers, 242 W 484. Furthermore it seems just that the public official (usually on a salary himself) should make answer without being paid a fee therefor. He does it on the public's time; and under old 304.21 no fee or deposit is required. In other words he gets no witness fees or other fees in connection with this garnishment or attachment.

(4) is so worded as to make it clear that the * * * sum owing cannot be contested in the garnishment action. (Bill 403-S)

Editor's Note: For annotations to 304.21, Stats. 1943, on quasi-garnishment see Wis. Annotations, 1930, p. 1401, and said statutes, p. 2916.

A wife who holds a judgment for alimony is not a "creditor" in the usual sense of the word. Courtney v. Courtney, 251 W 443, 29 NW (2d) 759.

267.235 History: 1969 c. 127; Stats. 1969 s. 267.235.

267.24 History: 1965 c. 507; Stats. 1965 s. 267.24.

CHAPTER 268.

Injunctions, Ne Exeat and Receivers.

268.01 History: 1856 c. 120 s. 126; R. S. 1858 c. 129 s. 1; R. S. 1878 s. 2773; 1925 c. 4; Stats. 1925 s. 268.01; 1935 c. 541 s. 116.

The code has not enlarged the power of equity to restrain or control the proceedings of subordinate tribunals or the official acts of officers, when such acts or proceedings affect real estate, lead to irreparable injury to the freehold, to the creation of a cloud upon the title or to a multiplicity of suits, except in reference to temporary injunctions during the pendency of litigation, which may be granted whether the action was formerly legal or equitable in its character. Montague v. Horton, 12 W 599.

When the complaint lays a foundation for an injunction the court will grant the writ either as a final judgment or as a provisional remedy in all cases where it would be allowed under chancery practice. Trustees of German E. Congregation v. Hoessli, 13 W 348.

An information by the attorney general is equivalent to a bill in chancery or a complaint for the purpose of obtaining an injunction. Attorney General v. Railroad Cos. 35 W 425.

Acts in excess and abuse of corporate franchises and privileges, resulting in private injuries, may be restrained at the suit of private parties. Madison v. Madison G. & E. Co. 129 W 249, 108 NW 65.

A high degree of proof is required before a court will interfere with the enforcement of a judgment on the ground that it was obtained by fraud. Federal Life Ins. Co. v. Thayer, 222 W 658, 269 NW 547.

In an action to enjoin defendants from denying plaintiffs the right to use a silo filler, the complaint, alleging that the plaintiffs and the defendants had purchased a silo filler for their joint use, but that the defendants would not permit the plaintiffs to use it, is not demurrable on the ground that, the parties being tenants in common, the plaintiffs could not secure control of the silo filler by an action against their cotenants in possession, since the parties, although tenants in common, were at liberty to contract as they saw fit as to the use and possession of the silo filler, and the plaintiffs were seeking merely to enforce their right to the use of the silo filler in accordance with the agreement. (Newton v. Gardner, 24 W 232, applied.) Kuenzi v. Liesten, 223 W 481, 271 NW 18.

The power of an equity court to enjoin enforcement of a judgment is not dependent upon its jurisdiction to review the proceedings on which the judgment is based. To authorize an injunction against enforcement of a judgment obtained by perjury, such perjury must be established by the same degree of proof as generally required in proof of criminal acts in civil cases, and the plaintiff must prove that he was not negligent in making timely discovery of such perjury and that he has exhausted legal remedies. Amberg v. Deaton, 223 W 653, 271 NW 396.

Courts may enjoin judgments in cases of extrinsic as well as intrinsic fraud. Equitable relief is not confined to judgments which were procured by fraud practiced on the court. Nehring v. Niemerowicz, 226 W 285, 276 NW 325.

The court could make an injunction permanent where it was satisfied that because of the competition between the parties the