of the relator's legal capacity to sue. State ex rel. Abbott v. House of Vision, etc. 259 W 87, 47 NW (2d) 321.

Acts, including those in violation of penal statutes, if in fact constituting a public nuisance, may be abated whether or not they are declared by statute to be a public nuisance, and every place where a public statute is openly, continuously and intentionally violated is a public nuisance; and such rule is not confined in its application to acts which are absolutely and completely prohibited, as distinguished from acts which are merely regulated and only conditionally forbidden, but applies to acts repeatedly performed and with the avowed purpose of continuing, which violate a statute, whether or not they might be lawful under other and different circumstances. (State ex rel. Attorney General v. Thekan, 184 W 42, and State ex rel. Cowie v. La Crosse Theaters Co. 232 W 153, followed.) State ex rel. Abbott v. House of Vision, etc. 259 W 87, 47 NW (2d) 321.

For discussion of repeated violation of a statute as sustaining an action to restrain a nuisance, see State v. Texaco, 14 W (2d) 625, 111 NW (2d) 918.

See note to 146.14, citing 24 Atty. Gen. 658.

280.03 History: R. S. 1849 c. 110 s. 1; R. S. 1858 c. 144 s. 1; R. S. 1878 s. 3181; Stats. 1898 s. 3181; 1925 c. 4; Stats. 1925 s. 280.03; 1935 c. 541 s. 377.

Sec. 1, ch. 144, R. S. 1858, was construed in Remington v. Foster, 42 W 608.

In an action to abate a nuisance and recover damages it was shown that individual defendants caused the nuisance, and the defendant corporation after purchasing the land continued it, but the damages were not apportioned. In such case no damages could properly be awarded against the corporation, but a judgment for abatement was properly awarded against all defendants. Karns v. Allen, 135 W 48, 115 NW 357.

In an action to abate a nuisance and for damages the complaint is not demurrable if otherwise sufficient, simply because the court on final hearing might not grant all the relief prayed for. Holman v. Mineral P. Z. Co. 135 W 132, 115 NW 327.

See note to 280.01, on procedure, citing Mitchell R. Co. v. West Allis, 184 W 352, 199 NW 390.

The trial court should confine itself to enjoining a nuisance, and leave the methods of compliance to the party enjoined. Rode v. Sealtite I. M. Corp. 3 W (2d) 286, 88 NW (2d) 345.

The court could order a city to take specific steps to abate a nuisance resulting from a sewage disposal plant. Costas v. Fond du Lac, 24 W (2d) 409, 129 NW (2d) 217.

280.04 History: R. S. 1849 c. 110 s. 2; R. S. 1858 c. 144 s. 2; R. S. 1878 s. 3182; Stats. 1898 s. 3182; 1925 c. 4; Stats. 1925 s. 280.04.

280.05 History: R. S. 1849 c. 110 s. 3; R. S. 1858 c. 144 s. 3; R. S. 1878 s. 3183; Stats. 1898 s. 3183; 1925 c. 4; Stats. 1925 s. 280.05.

280.06 History: R. S. 1849 c. 110 s. 4; R. S. 1858 c. 144 s. 4; R. S. 1878 s. 3184; Stats. 1898 s. 3184; 1925 c. 4; Stats. 1925 s. 280.06; 1935 c. 541 s. 378.

280.065 History: 1935 c. 269; Stats. 1935 s. 280.065.

280.07 History: 1939 c. 423; Stats. 1939 s. 280.07; 1947 c. 362.

280.08 History: 1903 c. 81 s. 1, 2; Supl. 1906 s. 3185a; 1911 c. 633 s. 435; 1925 c. 4; Stats. 1925 s. 280.08; 1959 c. 332.

280.09 History: 1913 c. 526; Stats. 1913 s. 3185b; 1925 c. 4; Stats. 1925 s. 280.09.

Property used in violation of secs. 3185b-3185h, Stats. 1915, is a nuisance, and upon a proper showing a temporary injunction may issue. State ex rel. Zabel v. Grefig, 164 W 74, 159 NW 560.

280.10 History: 1913 c. 526; Stats. 1913 s. 3185c; 1925 c. 4; Stats. 1925 s. 280.10; 1933 c. 228; 1935 c. 541 s. 380; 1961 c. 495.

280.11 History: 1913 c. 526; Stats. 1913 s. 3185d; 1925 c. 4; Stats. 1925 s. 280.11.

280.12 History: 1913 c. 526; Stats. 1913 s. 3185e; 1925 c. 4; Stats. 1925 s. 280.12.

280.13 History: 1913 c. 526; Stats. 1913 s. 3185f; 1925 c. 4; Stats. 1925 s. 280.13.

In an action under 280.09, 280.13 and 280.14, defendant cannot be permitted to pay costs to prevent furniture and other fixtures from being sold. It is mandatory that such furniture be sold in the manner provided for sale of chattels under execution. 16 Atty. Gen. 199.

280.14 History: 1913 c. 526; Stats. 1913 s. 3185g; 1925 c. 4; Stats. 1925 s. 280.14.

280.15 History: 1913 c. 526; Stats. 1913 s. 3185h; 1925 c. 4; Stats. 1925 s. 280.15; 1933 c. 228.

280.16 History: 1955 c. 696 s. 53; Stats. 1955 s. 280.16.

280.20 History: 1955 c. 696 s. 54; Stats. 1955 s. 280.20.

Editor's Note: 348.11, Stats. 1941, relating to the leasing of buildings used as gaming houses, was cited in Rea Club, Inc. v. Rupp, 244 W 587, 13 NW (2d) 88. That section and the three following sections were repealed by sec. 197, ch. 696, Laws 1955.

280.21 History: 1959 c. 335; Stats. 1959 s. 280.21.

280.22 History: 1969 c. 299; Stats. 1969 s. 280.22.

CHAPTER 281.

Provisions Relating to Land.

281.01 History: R. S. 1849 c. 84 s. 34; R. S. 1858 c. 141 s. 29; R. S. 1878 s. 3186; 1893 c. 88; Stats. 1898 s. 3186; 1919 c. 148; 1925 c. 4; Stats. 1925 s. 281.01; 1935 c. 541 s. 381.

Revisers' Note, 1878: Section 29, chapter 141, R. S. 1858, with additional clause regulating pleadings in view of Page v. Kernan, 38 W 320.

Editor's Note: In Hart v. Sansom, 110 U. S. 151, the U. S. supreme court held that a decree of a state court for the removal of a cloud upon the title of land within the state (Texas), rendered against a citizen of another state (Louisiana), the only service upon whom had been by publication, conformably to state laws, did not bar him from maintaining an action in a federal court to recover the land against the plaintiff in the suit in the state court.

A certificate of sale for an invalid tax constitutes a cloud upon title. Hamilton v. Fond du Lac, 25 W 490.

A tax deed upon a prior sale, made and recorded after one upon a subsequent sale, does not constitute a cloud upon title of the grantee in the latter. Truesdell v. Rhodes, 26 W 215.

Though subsequent proceedings are based upon an assessment roll and certificate void upon their face, sale and issue of a certificate constitute a setting up of a claim. Shephardson v. Milwaukee County, 28 W 593.

A tax is a lien from the time of assessment and, if illegal, a cloud upon title before sale, and the assessment will be declared void. Milwaukee Iron Co. v. Hubbard, 29 W 51.

Sale of land exempt from execution for debt incurred before patent issued constitutes a cloud upon title. Gile v. Hallock, 33 W 523.

A certificate of a board of public works may be a cloud upon title. Pier v. Fond du Lac, 38 W 470.

An owner may maintain an action to remove a cloud created by tax deed based on a void sale because land was sold for illegal excess, on tendering the amount for which it should have been sold with interest. Hart v. Smith, 44 W 213.

A complaint alleging delivery of a deed deposited in escrow, through false representations of the grantee and without performance of the required conditions, shows a good cause of action. Willis v. Sweet, 49 W 505, 5 NW 895.

An action may be maintained to prevent or remove cloud on title, threatened or existing by reason of a void tax. Roe v. Lincoln County, 56 W 66, 13 NW 887.

Action was brought by the owner against the purchaser at an execution sale under a void judgment. Prior to its commencement defendant assigned the certificate of sale for a nominal consideration, but it remained under his control, and the assignment was unknown to plaintiff. The answer did not disclaim title nor offer to give a release. Judgment against defendant was proper. Manning v. Heady, 64 W 630, 25 NW 1.

If land conveyed by a deed absolute in form but in fact intended as a mortgage is attached in a suit against the grantor the creditor who attaches it has a specific lien thereon and may maintain an action in aid of his attachment to test the legality of such mortgage without first obtaining judgment and issuing an execution. Evans v. Laughton, 69 W 138, 33 NW 573.

The holder of a mortgage and of tax liens may maintain an action to establish them against one who claims that the conveyance to the mortgagor was fraudulent and who took possession of the land claiming to hold it as a creditor of the mortgagor's grantor. Wilson v. Hooser, 72 W 420, 39 NW 772.

In an action to declare an unwitnessed deed valid all persons who claim interests in the premises hostile to the deed may be made parties. Leinenkugel v. Kehl, 73 W 238, 40 NW 683.

A complaint alleging plaintiff's ownership and possession of land and that defendant claimed to be the owner thereof and had brought several actions upon his claim prayed that he be enjoined from committing waste on the premises until the determination of his title and for general relief. The defendant counterclaimed, alleging ownership in fee by virtue of tax deeds, possession of the land, and praying that title be adjudged in him and also for general relief. The counterclaim stated a cause of action for quieting title, though it was silent as to the plaintiff's claim to the land. The facts were pleadable as a counterclaim, and the defendant was entitled to affirmative relief. A trial upon his counterclaim could not be prevented by a dismissal of the action by plaintiff. Grignon v. Black, 76 W 674, 45 NW 122 and 938.

Notwithstanding the claims of the defendants may arise from different sources and be in conflict with each other, or that one of them claims all the land and the others separate parcels thereof, their joinder is not improper. An action may be maintained under sec. 3186, R. S. 1878, though the defendant claims under a void deed. Ellis v. Northern P. R. Co. 77 W 114, 45 NW 811.

A party who has acquired a lien upon the property of his debtor by issuing and levying an execution thereon may maintain an action to set aside and avoid the claims of third persons to such property, when the complainant alleges that such other claims are fraudulent and void as against plaintiff's right. Rozek v. Redzinski, 87 W 525, 58 NW 262.

Sec. 3186 extends to an instrument not even apparently a cloud upon the title, but which is capable of being used to affect the title injuriously. Fox v. Williams, 92 W 320, 66 NW 357.

Allegations that the property was sold on an execution issued on a judgment against a stranger to the title, that certificates of sale were issued, delivered and filed, pursuant to such sale, according to the statutes and that such certificates are outstanding and of record, satisfy the statute. Broderick v. Cary, 98 W 419, 74 NW 95.

A counterclaim asking that the title of the defendant to the property be established is unnecessary under sec. 3186, as amended, and may be treated so by the plaintiff. Sloan v. Rose, 101 W 523, 77 NW 895.

Where plaintiff had a first mortgage and had bid in the land on foreclosure, but did not urge on such foreclosure that the holder of the second mortgage was the holder of a tax certificate on such land although he knew of the situation, in an action under sec. 3186, Stats. 1898, he was estopped to claim that the defendants' rights in respect to the tax certificate were affected. Hill v. Buffington, 106 W 525, 82 NW 712.

Where a judgment creditor and a trustee in bankruptcy of the debtor joined in an action

under sec. 3186, the question as to whether the creditor still held the judgment lien or whether it had been transmitted to the trustee under the bankruptcy act was immaterial on demurrer on the ground that the complaint did not state a cause of action, that there was another action pending and a misjoinder of causes of action. Level L. Co. v. Sivyer, 112 W 442, 88 NW 317.

A complaint which alleged that plaintiff was the owner in fee of the lands described and the defendants made some claims thereto which are a cloud upon the title is good. Mitchell I. & L. Co. v. Flambeau L. Co. 120 W 545, 98 NW 530.

A mortgage upon a strip of land by mistake conveyed to the mortgagor is a cloud upon the title of the persons who are entitled thereto. Pritchard v. Lewis, 125 W 604, 104 NW 989.

One who claims under a conveyance from a mortgagee who had foreclosed the mortgage, but the sale of which had not been confirmed, may maintain an action to test tax deeds. Coe v. Rockman, 126 W 515, 106 NW 290.

A warrantor of title may sue to remove or prevent a cloud thereon. Jackson M. Co. v. Scott, 130 W 267, 110 NW 184.

Sec. 3186, Stats. 1898, authorizing an action to quiet title to real property, is not a restriction on, but an enlargement of, the powers of a court of equity. Siedschlag v. Griffin, 132 W 106, 112 NW 18.

On allowance of costs under sec. 3186, Stats. 1898, see Maxcy v. Simonson, 130 W 650, 110 NW 803, and Durbin v. Knox, 132 W 608, 112 NW 1094.

An inchoate right of dower is an incumbrance within sec. 3186. Huntzicker v. Crocker, 135 W 38, 115 NW 340.

The holder of notes secured by trust deed on land may maintain a suit to quiet title. Roach v. Sanborn L. Co. 135 W 354, 115 NW 1102.

A court may not cancel a mortgage and quiet title against it unless the mortgagor tenders the amount of the debt. Hammond v. Brickson, 135 W 570, 116 NW 173.

A tax title claimant barred by a statute of limitations in favor of the original owner cannot insist upon a refund for taxes paid or compensation for tax liens acquired. Laffitte v. Superior, 142 W 73, 125 NW 105.

A grantee in tax deeds, who pleaded a disclaimer, but also defended on the merits and tendered no release, was not entitled to a dismissal. Mitchell v. Lyons, 163 W 399, 158 NW 70.

In order to maintain an action to remove a cloud on title a plaintiff must establish title in himself. Madler v. Kersten, 170 W 424, 175 NW 779.

In an action to reform a deed for inaccurate description of the premises, the burden of the proof is upon the plaintiff to overcome the presumption arising from the deed. Olsen v. Humiston, 186 W 70, 202 NW 160.

Heirs of the grantee of cemetery lots may maintain an action to preserve their interest therein and to remove a cloud on title. Wilder v. Evangelical L. J. Synod, 200 W 163, 227 NW 870.

In an action to quiet its title the state is not entitled to judgment against a nonappearing defendant if the state fails to substantiate its title. State v. Gether Co. 203 W 311, 234 NW 331.

Liens for services and materials date from the commencement of the first work and are prior to any other lien which originates subsequent to the commencement of construction. Such liens were prior to the lien of the mortgage which was executed subsequent to the commencement of construction. Interior W. Co. v. Buhler, 207 W 1, 238 NW 822.

The circuit court has jurisdiction of an action to quiet title begun by the widow of the testator's son, who elected to retain land as authorized by the will on his payment of legacies to testator's other children, although no final decree in the matter of the testator's estate had been entered by the county court, but the probate thereof was inactive. Mitchell v. Mitchell, 230 W 461, 283 NW 448.

Closing of the testator's estate in county court was unnecessary to establish the testator's title to a farm devised to his son and to give the circuit court jurisdiction of the latter's action to quiet title thereto. Sundermann v. Heinrich, 230 W 538, 284 NW 532.

While "quia timet" actions under general equity practice can only be brought by claimants of land in possession, claimants not in possession can bring such action under 281.01. Doherty v. Rice, 240 W 389, 3 NW (2d) 734.

Where a senior mortgage has been foreclosed without making a subordinate lienor a party, the proceedings leave the subordinate lienor with the rights he would have, had he been a party to the foreclosure proceedings. The rights of the subordinate lien claimant served with process in the foreclosure of a senior mortgage are to pay the mortgage or to redeem the property. These rights are unimpaired and unchanged by the defective foreclosure. The purchaser at the foreclosure sale of a senior mortgage, where the holder of a junior incumbrance has been omitted, may bring an action in equity to compel the junior claimant to exercise his right of redemption or have his redemption barred. If no such action is brought, the junior lienor may bring an action to redeem provided he does not lose his rights by laches. Buchner v. Gether Trust, 241 W 148, 5 NW (2d) 806, and Winter v. O'Neill, 241 W 280, 5 NW (2d) 809.

On the petition of a third person claiming to be the owner of real estate about to be sold on execution sale as having been fraudulently conveyed by the judgment debtor, where it appeared from the petition and affidavits that the petitioner was the unconditional owner of the property, and that it had constituted the homestead of the alleged fraudulent grantor, and the execution levy created a lien, constituting a cloud on the petitioner's title, the issuance of an order restraining the execution sale pending a determination on the merits was proper. Spellbrink v. Bramberg, 245 W 322, 14 NW (2d) 38.

An action to quiet title relying on a reversionary clause in a deed conveying land to a school district to be used for school purposes only was commenced after the district had ceased to conduct school and had been consolidated with another district. Official action of the school board in determining not to sell

the schoolhouse but to retain the property for a district park and playground, and ordering trees to be planted, all before a forfeiture was claimed, showed an intention to continue to use the property for "school purposes," and warranted the conclusion that there was no abandonment and that none was contemplated, requiring judgment against the plaintiff. The rule, requiring re-entry or some unequivocal act on the part of the grantor to indicate his intention to reclaim the property because of a breach of a condition subsequent, was satisfied by a letter addressed to the grantee school district, merely protesting against the right of the district to make a sale of the schoolhouse, and stating that the school buildings formed an integral part of the real estate and "revert back with the property" to the grantor. Koonz v. Joint School Dist. No. 4, 256 W 456, 41 NW (2d) 616.

See note to 275.01, citing Thiel v. Damrau, 268 W 76, 66 NW (2d) 747.

If a defendant appears in an action to quiet title, the unappealed judgment quieting title would be conclusive as to the title or right of the parties as it then stood. The judgment is not conclusive as to title and rights subsequently acquired. Weber v. Sunset Ridge, Inc. 269 W 120, 68 NW (2d) 706; 70 NW (2d) 5.

In an action to quiet title, the plaintiffs must prove that they have title to the tract in suit, and they cannot prevail on the mere weakness of the defendants' title. Schimmel v. Dundon, 1 W (2d) 98, 83 NW (2d) 143.

A mining lease provision, which required the lessor to give certain notice in order to terminate because of the lessee's failure to comply with the lease, had no application where the lessee terminated work and another lease provision required lessee in that event to execute a release, and purchasers of the fee were entitled to judgment establishing their title against any claim of the lessee, in absence of showing that such relief would be inequitable because no demand was made on the lessee to execute a release. Hoesley v. Fowler, 6 W (2d) 63, 94 NW (2d) 169.

Where the title of the plaintiffs in an action to quiet title to a parcel of land was traceable from certain tax deeds issued by a county, it was unnecessary, in determining what area was conveyed to the plaintiffs, to go further back than the assessments which gave rise to the tax sale certificates on which such tax deeds were issued. Brody v. Long, 13 W (2d) 288, 108 NW (2d) 662.

Sec. 3186, Stats. 1898, is an enlargement of equitable rights which may be determined by a federal court, and, having jurisdiction to entertain such action, the federal court may determine any question arising therein which could be determined by any state court. Farr v. Hobe-Peters L. Co. 188 F 10.

A person in possession, claiming under a tax deed, may institute a suit under sec. 3186, R. S. 1878; and the suit may be brought in a federal court in this state. Bardon v. Land & R. I. Co. 157 US 327.

An actual possession of part (as for the purpose of operating a railroad) and constructive possession of the remainder is all that sec. 3186, R. S. 1878, requires. The federal court having jurisdiction will administer the same relief under sec. 3186, R. S. 1878, as state courts can grant. Roberts v. Northern P. R. Co. 158 US 1.

281.02 History: 1909 c. 492; Stats. 1911 s. 3186m; 1925 c. 4; Stats. 1925 s. 281.02; 1927 c. 473 s. 50; 1935 c. 541 s. 382.

Revisor's Note, 1935: Service of summons is provided in chapter 262 (262.12 and 262.13). The provision for a note to the summons is made 262.02 (4). [Bill 50-S, s. 382]

The slight, occasional, noncontinuous use of a vacant or waste strip between 2 buildings was not adverse possession. Litel v. First Nat. Bank of Oregon, 196 W 625, 220 NW 651.

Evidence of adverse possession is always strictly construed, and every presumption is made in favor of the true owner; there must be the fact of possession together with the hostile intention, mere permissive possession being insufficient. Successive possessions of several distinct occupants of land between whom no privity exists cannot be tacked to make up the requisite limitation period. Bank of Eagle v. Pentland, 197 W 40, 221 NW 383.

The extent of the property claimed by adverse possession being limited by an old rail fence which ran in a jagged line, the boundary line is at the center of the fence. Brockman v. Brandenburg, 197 W 51, 221 NW 397.

281.03 History: 1856 c. 120 s. 37; R. S. 1858 c. 124 s. 7; 1867 c. 147; R. S. 1878 s. 3187; Stats. 1898 s. 3187; 1925 c. 4; Stats. 1925 s. 281.03; 1935 c. 541 s. 383; Sup. Ct. Order, 245 W xi; 1951 c. 106; 1955 c. 553; 1959 c. 186.

Plaintiff should be required to prove filing. Where it has not been done the presumption is that a recital in a judgment that it was filed is correct. Manning v. McClurg, 14 W 350.

Where the notice fails to correctly describe the premises a mortgagor against whom a default judgment has been rendered is entitled to have it set aside. Spraggon v. McGreer, 14 W 439.

Absence of proof of filing notice in a record of foreclosure is not a ground for reversal on a mortgagor's appeal. But if it be shown that no proof of filing was made judgment will be reversed. Catlin v. Pedrick, 17 W 88.

Failure of certificate of the register of deeds to state that he had compared the copy offered in evidence with the original is not ground for reversing the judgment where the objection was not specific. Best v. Davis, 18 W 386.

Notice in due form, introduced in evidence, with an affidavit of plaintiff's attorney that a copy thereof was filed, etc., and their admission without objection, was sufficient to sustain a judgment. Carberry v. Benson, 18 W 489.

Where the record is silent the presumption is that notice was filed. Sage v. McLaughlin, 34 W 550.

One who has not put upon record his evidence of title to land at the time notice of lis pendens is filed in an action brought under ch. 22, Laws 1859, by one claiming title to land by virtue of a tax deed, must be considered a subsequent purchaser, and so bound by the proceedings in said action to the same extent as if he were a party. Warner v. Trow, 36 W 196.

Surplusage in description will not vitiate a notice. Watson v. Wilcox, 39 W 643.

A recital in a judgment, as to filing, cannot be contradicted by affidavits on a motion to vacate the judgment. Mitchell v. Rolison, 52 W 155, 8 NW 886.

One not a party to an action who takes a conveyance from parties thereto during its progress is concluded by the judgment therein in the same manner and to the same extent his grantors are. Newton v. Marshall, 62 W 8, 21 NW 803.

Secs. 3187 and 2241, R. S. 1878, are consistent and, though the element of bad faith is not expressed here, to hold that it cannot be made an exception would make them contradictory. Coe v. Manseau, 62 W 81, 22 NW 155.

Notice of lis pendens was duly filed. After judgment, but before sale, the mortgagor conveyed to F. and he to the mortgagee. The last conveyance was not recorded. The foreclosure proceedings were not constructive notice of the mortgagee's interest to one who subsequently commenced an action to foreclose tax certificates. Coe v. Manseau, 62 W 81, 22 NW 155.

The defendant in ejectment conveyed the land to a corporation organized after the action was commenced. He was an incorporator, a stockholder and the first president thereof. No lis pendens had been filed. The corporation took with knowledge and subject to the litigation. Wisconsin C. R. Co. v. Wisconsin R. L. Co. 71 W 94, 36 NW 837.

The presumption is, the record being silent, that proof of the filing was duly made, and such presumption is not rebutted by the defendant's testimony to the effect that he believes no such proof was made. McBride v. Wright, 75 W 306, 43 NW 955.

A tenant who leases mortgaged land after a lis pendens has been filed in an action to foreclose the mortgage holds the land subject to whatever order the court may make concerning the title or possession, and if a receiver is appointed the tenant may be directed to surrender the possession to him or to pay rent from the time of the appointment of the receiver. Gaynor v. Blewett, 82 W 313, 52 NW 313.

The notice is inoperative unless the complaint is filed; and a recital in the judgment that the notice had been duly filed more than 20 days before judgment entered will not prevail where the file mark on the complaint shows that it was not filed until the day judgment was rendered. The objection that such judgment was irregular may be raised for the first time in the supreme court. Gile v. Colby, 92 W 619, 66 NW 802.

Where notice of lis pendens is not filed, the judgment is voidable but not void and the court has no power or authority to vacate or set aside this judgment at a subsequent term. State ex rel. Fuller v. Circuit Court, 108 W 77, 83 NW 1115.

A lis pendens is constructive notice only of the proceedings in the action in which it is filed and on the rights of the parties to that action. That a person has actual knowledge that a creditor has brought an action to set aside as fraudulent a conveyance by the debtor does not prevent a purchase by such person from the debtor's grantee, which will be good as to other creditors concerning whom he had no knowledge. Kickbusch v. Corwith, 108 W 634, 85 NW 148.

Where, on the foreclosure of a second mortgage a judgment was entered on the day after the commencement of a suit to foreclose the first mortgage, the filing of a lis pendens after such judgment but before sale could not affect purchasers on the sale under a foreclosure of the second mortgage. Roosevelt v. Land & River Co. 108 W 653, 84 NW 157.

Where an action for specific performance was brought and defendant disabled himself from making a conveyance after the suit was begun to one who had constructive notice from the filing of the lis pendens and actual notice because of service of the lis pendens upon him, a decree of specific performance would be effective as against the purchaser. Brown v. Griswold, 109 W 275, 85 NW 363.

Where a land contract was executed before an action was begun and lis pendens filed but there was no delivery of the contract afterward, the grantee in the contract was the purchaser pendente lite. Siedschlag v. Griffin, 132 W 106, 112 NW 18.

A notice of lis pendens is not superseded by the dissolution of an injunction restraining trespass upon the lands involved in the suit, nor by an order allowing the defendant to cut timber upon the filing of the bond, and purchasers pendente lite are liable for the full value of damage done by them. McCord v. Akeley, 132 W 195, 111 NW 1100.

Filing a summons and complaint in an action affecting the title to real estate, without filing notice of lis pendens, is not constructive notice. Glass v. Zachow, 156 W 21, 145 NW 236.

The effect of the lis pendens as notice to persons interested in the title to the real estate involved is lost by the dismissal of the action of which the lis pendens was notice. O'Brien v. Rice, 186 W 523, 203 NW 332.

A lis pendens in a foreclosure action is constructive notice to all tenants to whom the mortgaged premises are subsequently leased of an order of receivership previously entered, and such tenants take the premises subject to whatever order the court may make affecting the title or possession thereof, and under the order of receivership involved in this case, tenants were bound to pay rent to the receiver. The mortgagor was not entitled to recover the rent from them. Nowakowski v. Novotny, 245 W 161, 13 NW (2d) 523.

There is no requirement in the law that any party who acquires an interest in the mortgagor's equity after the filing of a proper notice of lis pendens should be served with any notice of any step to be taken in the prior-instituted mortgage foreclosure suit. United States v. Klebe T. & D. Co. 5 W (2d) 392, 92 NW (2d) 868.

The lis pendens required by 281.03 (1), Stats. 1963, in any action where the complaint contains a legal description of real estate and seeks relief in respect to the title thereto, is intended for the benefit of persons acquiring the property or some interest therein after the commencement of the action, and constitutes legal notice to any such person not having knowledge of the proceedings at the time his interest was procured or derived. Hailey v. Zacharias, 39 W (2d) 536, 159 NW (2d) 667.

Under 281.03 (1), Stats. 1965, purchasers of

the mortgaged property, subsequent to the filing of the lis pendens in the foreclosure action, are bound and concluded by the proceedings and judgment therein, whether taken or entered before or after they acquired title, to the same extent and in the same manner as if they had been joined and served as parties thereto. J. & S. Corp. v. Mortgage Associates, Inc. 41 W (2d) 418, 164 NW (2d) 221.

281.04 History: 1881 c. 319; 1885 c. 237; Ann. Stats. 1889 s. 927a; Stats. 1898 s. 3187a; 1899 c. 351 s. 38; 1901 c. 121 s. 1; 1905 c. 227 s. 1; Supl. 1906 s. 3187a; 1925 c. 4; Stats. 1925 s. 281.04.

The requirement that the resolution be recorded means that it must be recorded in the office of the register of deeds of the county in which the land was situated. Svennes v. West Salem, 114 W 650, 91 NW 121.

Sec. 3187a, Stats. 1898, does not apply to applications to supervisors under ch. 54, Stats. 1898, for laying out of drains, as the supervisors in such case are acting as public or governmental officers and not as a town board. Rude v. Ste. Marie, 121 W 634, 99 NW 460.

The recording of a resolution of the common council carrying necessity for widening the street is not a sufficient compliance with sec. 3187a, Stats. 1898. Roehl v. Milwaukee, 141 W 341, 124 NW 400.

Failure to file notice of pendency of an application to condemn land to widen a street did not render condemnation proceeding void against owners appearing and consenting thereto. The lis pendens doctrine does not apply to parties to action. Pennefeather v. Kenosha, 210 W 695, 247 NW 440.

281.06 History: 1856 c. 120 s. 197; R. S. 1858 c. 134 s. 6; R. S. 1878 s. 3188; Stats. 1898 s. 3188; 1925 c. 4; Stats. 1925 s. 281.06.

The language "shall be effectual to pass the rights and interest of the parties in the property adjudged to be sold," when applied to the deed executed upon a foreclosure sale, must be understood as referring to such rights and interest as were or might properly have been litigated in the foreclosure action. Pelton v. Farmin, 18 W 222.

281.07 History: 1863 c. 300 s. 1, 2; 1873 c. 57; R. S. 1878 s. 3189; 1882 c. 307; Ann. Stats. 1889 s. 3189; Stats. 1898 s. 3189; 1925 c. 4; Stats. 1925 s. 281.07; 1935 c. 541 s. 384.

281.09 History: R. S. 1849 c. 111 s. 5; R. S. 1858 c. 146 s. 5; R. S. 1878 s. 3191; Stats. 1898 s. 3191; 1925 c. 4; Stats. 1925 s. 281.09; 1935 c. 541 s. 386.

281.11 History: R. S. 1849 c. 111 s. 11 to 13; R. S. 1858 c. 146 s. 11 to 13; R. S. 1878 s. 3193; Stats. 1898 s. 3193; 1925 c. 4; Stats. 1925 s. 281.11.

281.12 History: R. S. 1849 c. 111 s. 15; R. S. 1858 c. 146 s. 15; R. S. 1878 s. 3194; Stats. 1898 s. 3194; 1925 c. 4; Stats. 1925 s. 281.12.

281.28 History: Sup. Ct. Order, 239 W viii; Stats. 1943 s. 281.28.

Comment of Advisory Committee: 281.28 is a companion to 272.11. It rounds out the procedure for foreclosure of land contracts. [Re Order effective July 1, 1942]

281.30 History: 1953 c. 545; Stats. 1953 s. 281.30; 1955 c. 10 s. 160; 1961 c. 495; 1965 c. 252.

See note to sec. 12, art. I, on impairment of contracts, citing 48 Atty. Gen. 77.

CHAPTER 285.

Actions Against State.

285.01 History: 1850 c. 249 s. 1, 2; R. S. 1858 c. 157 s. 1, 2; R. S. 1878 s. 3200; Stats. 1898 s. 3200; 1925 c. 4; Stats. 1925 s. 285.01; 1935 c. 483 s. 2; 1969 c. 276.

On suits against the state see notes to sec. 27, art. IV; and on jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03.

A contract between an individual and the state is to be construed and the liabilities of the parties under it are to be determined by the same rules as govern contracts between individuals. Sholes v. State, 2 Pin. 499.

Paying a claim on condition that acceptance of the sum allowed should be a bar to all unsettled claims, etc., did not make acceptance a bar to a claim which had previously been settled by the legislature. Baxter v. State, 9 W 38.

The state may plead the statute of limitations. Baxter v. State, 10 W 398, 15 W 541, 17 W 588.

The acceptance by a creditor of the state of a sum appropriated in full payment of a demand is a bar to a further prosecution of the claim on account of such demand where there is no fraud, accident or mistake in matter of fact. Massing v. State, 14 W 502.

A denial that the state has ever refused to pay plaintiff his just claim, if any, does not traverse an averment of a presentation of the claim to the legislature and a refusal to allow it. Shipman v. State, 43 W 381.

The supreme court has no jurisdiction to render a judgment for costs against the state in a criminal action. A judgment for costs in such an action, rendered by the supreme court of the United States, does not constitute a claim against the state within the meaning of this statute. Noyes v. State, 46 W 250, 1 NW 1.

Money voluntarily paid to the state for peddlers' licenses under a void statute cannot be recovered; but the rule is otherwise if payment was made under duress or menace by public officers. Prima facie the right to recover is in the peddler who made the payment; and the duress which renders the payment involuntary must be of such person. Noyes v. State, 46 W 250, 1 NW 1.

No action can be maintained against the state in any court thereof unless it is authorized by statute. Chicago, M. & St. P. R. Co. v. State, 53 W 509, 10 NW 560.

Sec. 3200, R. S. 1878, does not extend to a demand based upon the unlawful and tortious acts of officers or agents of the state, as for killing animals alleged to be affected by a contagious or infectious disease when they are not so affected. Houston v. State, 98 W 481, 74 NW 111.

The state may waive its immunity from action in torts committed by its officers as well as on contracts. Apfelbacher v. State, 160 W 565, 152 NW 144.