not entitled to compensation. The "term of imprisonment," as used in sec. 3203a, Stats. 1921, means the term fixed by the court or such term as shortened by pardon. 11 Atty. Gen. 872.

285.06 History: 1953 c. 621; Stats. 1953 s. 285.06; 1959 c. 299; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 276 ss. 566, 582 (9); 1969 c. 366 s. 117 (3) (a).

285.10 History: 1866 c. 92; R. S. 1878 s. 2638; Stats. 1898 s. 2638; 1921 c. 474; 1925 c. 4; Stats. 1925 s. 262.10; 1927 c. 473 s. 47; 1959 c. 226 s. 14; Stats. 1959 s. 285.10.

262.10, Stats. 1929, was enacted pursuant to the power conferred by sec. 27, art. IV. Fulton v. State A. and I. Board, 204 W 355, 236 NW 120.

The state annuity and investment board holding a mortgage on the military company's premises was a proper party defendant in a suit to foreclose a mechanic's lien for construction of the armory thereon. Fulton v. State A. and I. Board, 204 W 355, 236 NW 120.

In an action to set aside a sale of land by the university regents, the state was not a necessary party since it had no interest in the land, and the action will be dismissed as to it. Glendale Development, Inc. v. Board of Regents, 12 W (2d) 120, 106 NW (2d) 430.

285.10, Stats. 1967, is construed as consenting to any equitable action involving land where no judgment for the recovery of money or personal property is sought against the state, thus permitting the state to be made a defendant when declaratory judgment, injunctive relief, or specific performance is sought because the state claims, or is alleged to claim, an interest in land adverse to the plaintiff. Herro v. Wisconsin F.S.P.D. Corp. 42 W (2d) 87, 166 NW (2d) 433.

Joinder of state in quiet-title and foreclosure proceedings. Reynolds, 33 WBB, No. 6.

285.11 History: 1965 c. 413; Stats. 1965 s. 285.11; 1969 c. 276 s. 582 (9).

CHAPTER 286.

Actions Against Corporations.

286.03 History: R. S. 1849 c. 113 s. 7; R. S. 1858 c. 148 s. 5; R. S. 1878 s. 3206; Stats. 1898 s. 3206; 1925 c. 4; Stats. 1925 s. 286.03; 1935 c. 483 s. 9.

286.12 History: R. S. 1849 c. 114 s. 9; R. S. 1858 c. 148 s. 21; R. S. 1878 s. 3218; Stats. 1898 s. 3218; 1925 c. 4; Stats. 1925 s. 286.12; 1935 c. 483 s. 17; 1967 c. 89.

Editor's Note: Secs. 3218 and 3219, R. S. 1878, had application to "any corporation having banking powers, or having the power to make loans or pledges or deposits, or authorized by law to make insurance * * *."

Under secs. 3218 and 3219, R. S. 1878, a creditor or a stockholder of an insolvent insurance company may have the exercise of its corporate rights restrained, secure the appointment of a receiver and have the corporate business closed up. The attorney general may become a party to such an action and therein obtain a decree for the dissolution of the corporation; but he cannot, after a receiver has been appointed and an injunction granted, proceed for that purpose under sec. 1968. In re Oshkosh Mut. Fire Ins. Co. 77 W 366, 46 NW 441.

An insolvent corporation of either of the classes mentioned may be restrained by injunction from prolonging its existence, or embarrassing the receiver and court in closing its affairs, by exercising any corporate franchise; but the insolvent corporation shall remain inert while the receiver closes its affairs under the direction of the court. Milwaukee Mut. Fire Ins. Co. v. Sentinel Co. 81 W 207, 51 NW 440.

Sec. 3218, R. S. 1878, and the following sections require the forfeiture of the charter and immediate suspension of all business by a bank as soon as application can be made and its insolvency proven. In re Koetting, 90 W 166, 62 NW 622.

Granting an injunction against and appointing a receiver for a mutual insurance company cancels all its existing policies, and renders all its premium notes, so far as the premiums for which they were given were unearned, void. Davis v. Shearer, 90 W 250, 62 NW 1050.

When an action is brought under secs. 3218 and 3219, R. S. 1878, it is the exclusive action in which not only the assets of the corporation are to be administered but also the liabilities of officers and stockholders are to be ascertained and enforced. Gager v. Bank of Edgerton, 101 W 593, 598, 77 NW 922.

Any creditor or stockholder may bring an action as provided in secs. 3218 and 3219, Stats. 1898. Bergh v. Security S. Bank, 122 W 514, 100 NW 831.

Sec. 3218, Stats. 1898, supplements but does not do away with the common law regarding creditor's bills. A creditor's bill may be brought against a foreign corporation. Lehr v. Murphy, 136 W 92, 116 NW 893.

In an action based upon a judgment and execution returned unsatisfied, it is an irregularity to enter a new judgment against the corporation but the other defendants are not prejudiced thereby. McGovern v. Milwaukee M. Co. 141 W 309, 124 NW 269.

286.13 History: R. S. 1849 c. 114 s. 10 to 12; R. S. 1858 c. 148 s. 22 to 24; R. S. 1878 s. 3219; Stats. 1898 s. 3219; 1901 c. 175 s. 1; Supl. 1906 s. 3219; 1925 c. 4; Stats. 1925 s. 286.13; 1935 c. 483 s. 19.

A creditor of an insolvent banking corporation may bring an action in behalf of all creditors to close up the business of the bank and enforce the liabilities of the officers and stockholders. Hurlbut v. Marshall, 62 W 590, 22 NW 852.

The mere fact that a libel of an insurance company has resulted in pecuniary injury to it does not make the cause of action one for an injury to its property which passes to the receiver. Milwaukee Mut. Fire Ins. Co. v. Sentinel Co. 81 W 207, 51 NW 440.

A receiver's appointment cannot be attacked collaterally in an action brought by him after he has qualified, where the court appointing him had jurisdiction of the subject matter, notwithstanding the application for his appointment was insufficient. Davis v. Shearer, 90 W 250, 62 NW 1050.

286.15 History: R. S. 1849 c. 114 s. 10; R. S.

1858 c. 148 s. 22; R. S. 1878 s. 3220; Stats. 1898 s. 3220; 1925 c. 4; Stats. 1925 s. 286.15; 1935 c. 483 s. 21.

286.17 History: R. S. 1849 c. 114 s. 14; R. S. 1858 c. 148 s. 26; R. S. 1878 s. 3222; Stats. 1898 s. 3222; 1925 c. 4; Stats. 1925 s. 286.17.

Sec. 26, ch. 148, R. S. 1858, merely extends the remedy given by sec. 25 of ch. 148 to such creditors as may choose to proceed to judgment against the corporation before resorting to the equitable proceeding provided. Cleveland v. Marine Bank, 17 W 545.

286.18 History: R. S. 1849 c. 114 s. 15; R. S. 1858 c. 148 s. 27; R. S. 1878 s. 3223; Stats. 1898 s. 3223; 1901 c. 129 s. 1; Supl. 1906 s. 3223; 1925 c. 4; Stats. 1925 s. 286.18; 1935 c. 483 s. 23.

Editor's Note: In decisions made under ch. 148, R. S. 1858, and cited in Sleeper v. Goodwin, 67 W 577, 588, the supreme court determined "that an action to enforce a statutory liability against the stockholders of a corporation should be an action in equity, in which the plaintiff should proceed on his own behalf and also in the behalf of all other creditors having similar claims, against all the stockholders who were liable to them under the law; and that the corporation should be made a party to such action, unless it has been dissolved or its assets have been wholly exhausted".

Secs. 3223 and 3224, R. S. 1878, relate to corporations of all kinds, whether moneyed or otherwise. Sleeper v. Goodwin, 67 W 577, 31 NW 335.

A complaint in an action against bank stockholders is good if it alleges that plaintiff is a creditor whose claim is due, that he sues on behalf of himself and all other creditors, that defendants are stockholders and liable as such, and if it alleges reasons why the corporation is not a defendant. Williams v. Meloy, 97 W 561, 73 NW 40.

An action by a stockholder to charge officers with moneys misappropriated by them does not come under sec. 3223, Stats. 1898, and does not depend upon any statutory enactment. Cunningham v. Wechselberg, 105 W 359, 81 NW 414.

The amendment of 1901 was prospective only and gave a future right to creditors of an insolvent corporation to prosecute stockholders who were out of reach of the court when the affairs of the bank were being wound up. McNaughton v. Ticknor, 113 W 555, 89 NW 493.

This liability must be worked out in equity. Williams v. Brewster, 117 W 370, 93 NW 479.

An action prosecuted under sec. 3223, against a corporation and its stockholders by a creditor is prosecuted for the pro rata benefit of himself and all other creditors of the corporation. And one of such creditors whose claim has been allowed by the judgment in such action having filed a claim therefor against the estate of one of the stockholders held liable in the action, the amount allowed him by the county court should be the full amount of his claim, not exceeding the amount of the liability of the estate, and the amount so allowed should be paid to the clerk of the court in which the creditor's action was prosecuted to be distributed by that court pro rata to all of the creditors whose claims were adjudicated in the action. Dietrich v. Estate of Loney, 169 W 469, 172 NW 229.

There is one feature common to the 3 classes of cases in which the statutes authorize remedial proceedings against corporations —a community of interest in the avails of the litigation. Under the permissive authority to join the corporation at the election of the creditor he cannot fail to make it a party when the liability of the shareholder is contingent and dependent, as in an action to enforce the liability of stockholders for unpaid subscriptions to stocks, for that would sanction the turning of a contingent and dependent into a primary and absolute liability. Sec. 3223, R. S. 1878, merely sanctions the joinder or omission of a corporation when it was liable on a contract for the amount of which, in whole or in part, the shareholder was liable under the statute. Flour City Nat. Bank v. Wechselberg, 45 F 547, 549.

286.19 History: R. S. 1849 c. 114 s. 16, 17; R. S. 1858 c. 148 s. 28, 29; R. S. 1878 s. 3224; Stats. 1898 s. 3224; 1925 c. 4; Stats. 1925 s. 286.19; 1935 c. 483 s. 24.

It is not necessary that the corporate assets be fully exhausted before creditors can proceed to judgment against the stockholders; the court must so administer the affairs of the corporation as to satisfy its liabilities out of its assets so far as practicable, and upon it appearing that the stockholders' liability must be resorted to to enforce the same by judgment. A proceeding is proper if it is shown that such liability must be exhausted to pay the corporate debts, and a complaint may be good though it does not allege such facts. It is enough to allege and show that plaintiff is a creditor whose debt is due and payable, that he sues on behalf of himself and all other creditors, that defendants are stockholders and liable for the indebtedness, and, if the corporation is not a defendant, sufficient reason therefor. Booth v. Dear, 96 W 516, 71 NW 816.

286.20 History: R. S. 1849 c. 114 s. 18; R. S. 1858 c. 148 s. 30; R. S. 1878 s. 3225; Stats. 1898 s. 3225; 1925 c. 4; Stats. 1925 s. 286.20.

Taxes should be paid only pursuant to order of the court; but if the payment has been made the court will not disallow it although the receiver made it without authority. Hamacker v. Commercial Bank, 95 W 359, 70 NW 295.

286.21 History: R. S. 1849 c. 114 s. 19, 20; R. S. 1858 c. 148 s. 31, 32; R. S. 1878 s. 3226; Stats. 1898 s. 3226; 1925 c. 4; Stats. 1925 s. 286.21; 1935 c. 483 s. 25.

The complaint in an action by the creditor of a corporation to enforce the payment of the balance required to make the par value of the stock sold to the defendant stockholders is good if it alleges that they received their shares in payment for certain mining rights which they knew to be worth much less than such value. It is not necessary to allege that plaintiff gave the corporation credit in the belief that full value had been paid for the stock, nor to negative the possession of his knowledge, when he gave the credit, of the consideration upon which the stock was is-

sued. Gogebic I. Co. v. Iron Chief M. Co. 78 W 427, 47 NW 726.

The word "debts" and the words "debts and contracts" do not ordinarily include liabilities for torts not reduced to a judgment. Lehmann v. Farwell, 95 W 185, 70 NW 170.

One who became a creditor of a corporation before it issued stock to a person proceeded against as a stockholder cannot question the transaction by which the stock was acquired. A subscription for capital stock may be shown by parol to have been made conditionally. It is not binding before its delivery to and acceptance by the corporation; and where it is held as collateral to secure a debt of the corporation the holder is not liable to creditors whose claims accrued before he became such. Gilman v. Gross, 97 W 224, 72 NW 885.

A creditor of a bankrupt corporation who filed his unsecured claim in the bankruptcy proceedings must first apply there for relief as against the assets of the bankrupt, which are exclusively subject to the jurisdiction of the federal court. Where his complaint clearly indicates that no application was made in the federal court to have the trustee directed to institute proceedings, such creditor cannot maintain an action in the state courts under 286.21 for the purpose of compelling stockholders to pay the amounts due for their subscriptions. Gilmer v. Wilcox, 194 W 107, 215 NW 827.

286.22 History: R. S. 1849 c. 114 s. 25; R. S. 1858 c. 148 s. 37; R. S. 1878 s. 3227; Stats. 1898 s. 3227; 1925 c. 4; Stats. 1925 s. 286.22; 1935 c. 483 s. 26.

If objection is not made that one foreign corporation proceeding under sec. 3227, R. S. 1878, against another such corporation which is insolvent and has property in this state has an adequate remedy at law, the fact the plaintiff had no lien on such property by levy or otherwise will not prevent its jurisdiction from attaching. State ex rel. Fowler v. Circuit Court, 98 W 143, 73 NW 788.

The liability of stockholders of a foreign corporation cannot be enforced in this state where the enforcement of the liability depends upon local law. Eau Claire Nat. Bank v. Benson, 106 W 624, 82 NW 604.

A winding-up suit may be maintained by a stockholder when it appears that the relation of debtor and creditor exists between the corporation and the plaintiff. The fact that a receiver has been appointed in the same suit does not render the complaint demurrable. Michelson v. Pierce, 107 W 85, 82 NW 707.

Sec. 3227, Stats. 1898, points out a method by which the court can ascertain the exact personnel of the plaintiffs, and their relative rights in the fund. Rehbein v. Rahr, 109 W 136, 85 NW 315.

286.23 History: R. S. 1849 c. 114 s. 21 to 24; R. S. 1858 c. 148 s. 33 to 36; R. S. 1878 s. 3228; Stats. 1898 s. 3228; 1925 c. 4; Stats. 1925 s. 286.23; 1935 c. 483 s. 27.

The power conferred by sec. 3228, R. S. 1878, in respect to any person to whom it is alleged that any transfer of property of an insolvent corporation has been made, is merely to compel such person to testify in relation thereto. Clarke & Banner v. Volksfreund P. Co. 50 W 416, 7 NW 309.

Sec. 3228, Stats. 1898, provides a rule of evidence by which a party guilty of participating in the commission of a fraud upon creditors of an insolvent corporation may be a defendant in a winding-up suit and, when called upon to testify as to his conduct, be incapable of shielding himself from making full disclosure by pleading his privilege. Harrigan v. Gilchrist, 121 W 127, 99 NW 909.

286.32 History: R. S. 1849 c. 114 s. 3, 5, 14; R. S. 1858 c. 148 s. 15 to 17; R. S. 1878 s. 3237 to 3239; Stats. 1898 s. 3237 to 3239; 1925 c. 4, 102; Stats. 1925 s. 286.32 to 286.34; 1935 c. 483 s. 30, 31; Stats. 1935 s. 286.32; 1959 c. 258; 1961 c. 495.

The complaint alleged facts necessary to state a cause of action, giving the court jurisdiction upon an accounting by the officers of the corporation. South Bend C. P. Co. v. George C. Cribb Co. 97 W 230, 72 NW 749.

Directors are liable to be charged as trustees of property fraudulently misapplied or wasted by them independent of the statute; and sec. 3237, R. S. 1878, does not add materially to the general mode of jurisdiction of the court on this subject. Gores v. Day, 99 W 276, 74 NW 787.

Where the purpose of the acts of a corporation is illegal the court may declare the proceedings void and direct their cancellation on the records of the corporation. Theis v. Durr, 125 W 651, 104 NW 985.

The state has no authority to bring an action for the discovery of assets due a private corporation, or for the removal of corporate officers where the acts charged are not within sec. 3229, Stats. 1898. State v. Milwaukee, E. R. & L. Co. 136 W 179, 116 NW 900.

In an action to compel a declaration of dividends, the directors are necessary defendants. Gesell v. Tomahawk Land Co. 184 W 537, 200 NW 550.

The unanimous consent of the directors of a corporation to change the salary of the secretary not being obtainable, a court of equity could not, under 286.32, require the directors to pay back any portion of alleged excess salaries theretofore fixed under the articles. Ehaney v. Chesebro, 192 W 532, 213 NW 315.

To maintain a stockholder's action for the benefit of the corporation for mismanagement of officers or directors it must appear that it is brought in behalf of the corporation, that proper demand on the officers to bring it was refused, or that such a demand would be useless. Wells v. Frank L. Wells Co. 206 W 507, 240 NW 415.

286.325 History: R. S. 1849 c. 114 s. 5, 14; R. S. 1858 c. 148 s. 17; R. S. 1878 s. 3239; 1925 c. 4; Stats. 1925 s. 286.34; 1935 c. 483 s. 31; Stats. 1935 s. 286.32 (11); 1959 c. 258 s. 2; Stats. 1959 s. 286.325.

A creditor of a corporation may maintain an action to redress wrongs to such corporation which grew out of misconduct of its officers. Killen v. Barnes, 106 W 546, 82 NW 536.

In a stockholder action under secs. 3227-3229, Stats. 1898, plaintiff cannot set up a claim which he has personally against those who were in control of the corporation. Nor can he challenge an officer's salary where he

had agreed to it under a promise that he should personally receive a consideration. Figge v. Bergenthal, 130 W 594, 109 NW 581, 110 NW 798.

See note to 286.32, citing State v. Milwaukee E. R. & L. Co. 136 W 179, 116 NW 900.

See note to 286.32, citing Wells v. Frank L. Wells Co. 206 W 507, 240 NW 415.

286.35 History: 1856 c. 120 s. 333; R. S. 1858 c. 160 s. 3; R. S. 1878 s. 3240; Stats. 1898 s. 3240; 1925 c. 4; Stats. 1925 s. 286.35.

See note to 294.04, on exercise of corporate franchise, citing Stedman v. Berlin, 97 W 505, 73 NW 57.

286.36 History: 1856 c. 120 s. 334; R. S. 1858 c. 160 s. 4; 1874 c. 283 s. 1; R. S. 1878 s. 3241; Stats. 1898 s. 3241; 1925 c. 4; Stats. 1925 s. 286.36; 1935 c. 483 s. 32.

If a railroad company discontinues its road where it was bound by its charter to maintain it, it forfeits its charter. Attorney General v. West Wisconsin R. Co. 36 W 466.

The principal place of business, the records and the residence of the principal officers of private corporations created by this state shall be within the state so far as needful to give effect to the statutes thereof; and the charter of such corporation may be adjudged forfeited for continued neglect of such duty, under ch. 283, Laws 1874. State ex rel. Attorney General v. Milwaukee, L. S. & W. R. Co. 45 W 579.

An action may be brought to vacate the charter or terminate the existence of a street railway company which has not observed an ordinance enacted under sec. 1862, R. S. 1878. State ex rel. Attorney General v. Madison S. R. Co. 72 W 612, 40 NW 487.

The proceeding authorized by sec. 3241, R. S. 1878, is solely against the corporation, and it should be the only defendant. State ex rel. Attorney General v. Janesville W. Co. 92 W 496, 66 NW 512.

The state may waive the right to enforce the forfeiture of the franchise of a corporation, by delay in instituting the proceeding, while it expends large sums of money in good faith in carrying out its purposes. State ex rel. Attorney General v. Janesville W. Co. 92 W 496, 66 NW 512.

Sec. 3241, R. S. 1878, is a copy of a New York statute, the words of which were taken from 9 Anne, ch. 20, sec. 4. Attorney General v. Superior & St. Croix R. Co. 93 W 604, 67 NW 1138.

See note to sec. 3, art. VII, on control over corporations and non-judicial officers, (quo warranto), citing Attorney General v. Superior & St. Croix R. Co. 93 W 604, 67 NW 1138.

Aside from a few exceptions no private person can assert, as a party litigant, that the corporation is illegal, that its franchises have been forfeited, that it has been dissolved or that its incorporation was illegal, until after it has been so adjudged in proceedings instituted by the state. Independent Order of Foresters v. United Order of Foresters, 94 W 234, 68 NW 1011.

Where the period of nonuser of a small part of a street railroad continued for less than 5 years and there was no act clearly indicating an intention to abandon the right and no consent on the part of the public thereto, nor acceptance of a surrender, the franchise was not extinct. Wright v. Milwaukee E. R. & L. Co. 95 W 29, 69 NW 791.

If the franchise of a street railway company to operate its road on a portion of a street has not lapsed or been lost, an injunction to restrain it from laying tracks thereon cannot be maintained by the city, because it would result in a forfeiture of the franchise so far as such portion is concerned, and that can only be declared at the suit of the state. Milwaukee E. R. & L. Co. v. Milwaukee, 95 W 39, 69 NW 794.

An application to bring an action under sec. 3241, R. S. 1878, shows that there has been a clear, wilful misuse, abuse or nonuse of the franchise, or violation of law whereby the corporation has failed to serve the purpose of its organization. Milwaukee E. R. & L. Co. v. Milwaukee, 95 W 39, 69 NW 794.

Sec. 3241, Stats. 1898, only authorizes an action to be brought to vacate a charter of a domestic corporation. State ex rel. Attorney General v. Portage C. W. Co. 107 W 441, 83 NW 697.

Sec. 3241 requires that the petitioner should show that he has a prima facie case which will justify a forfeiture of the charter. Ashland v. Ashland W. Co. 110 W 94, 85 NW 695.

286.37 History: 1856 c. 120 s. 334; R. S. 1858 c. 160 s. 4; 1874 c. 283 s. 1; R. S. 1878 s. 3242; Stats. 1898 s. 3242; 1925 c. 4; Stats. 1925 s. 286.37; 1969 c. 276.

286.38 History: 1856 c. 120 s. 355; R. S. 1858 c. 160 s. 5; R. S. 1878 s. 3243; Stats. 1898 s. 3243; 1925 c. 4; Stats. 1925 s. 286.38.

286.40 History: 1856 c. 120 s. 345 to 348; R. S. 1858 c. 160 s. 15 to 18; 1862 c. 46 s. 3; 1875 c. 329 s. 2; R. S. 1878 s. 3245; Stats. 1898 s. 3245; 1925 c. 4; Stats. 1925 s. 286.40; 1935 c. 483 s. 34.

286.41 History: 1875 c. 329 s. 3; R. S. 1878 s. 3246; Stats. 1898 s. 3246; 1925 c. 4; Stats. 1925 s. 286.41; 1935 c. 483 s. 35; 1961 c. 495.

286.42 History: 1875 c. 329 s. 4; R. S. 1878 s. 3247; Stats. 1898 s. 3247; 1925 c. 4; Stats. 1925 s. 286.42.

286.43 History: 1862 c. 46 s. 4; R. S. 1878 s. 3248; Stats. 1898 s. 3248; 1925 c. 4; Stats. 1925 s. 286.43; 1947 c. 9 s. 31; 1961 c. 316.

286.44 History: 1856 c. 120 s. 349; R. S. 1858 c. 160 s. 19; R. S. 1878 s. 3249; Stats. 1898 s. 3249; 1925 c. 4; Stats. 1925 s. 286.44; 1935 c. 483 s. 36; Sup. Ct. Order, 275 W ix.

286.45 History: R. S. 1878 s. 3250; Stats. 1898 s. 3250; 1925 c. 4; Stats. 1925 s. 286.45.

286.46 History: R. S. 1849 c. 114 s. 26; R. S. 1858 c. 148 s. 38; R. S. 1878 s. 3251; Stats. 1898 s. 3251; 1925 c. 4; Stats. 1925 s. 286.46.

286.46, Stats. 1931, exempting the proprietors of burial grounds from the visitorial powers vested by ch. 286, relates to the proprietors of lots in cemeteries of associations incorporated under ch. 157 and does not exempt therefrom corporations organized under ch. 180, owning and operating cemeteries. Hillier v. Lake View Memorial Park, 208 W 614, 243 NW 406.