

given to the proper railroad officer, it shall be the duty of such railroad company to provide, with all convenient dispatch, sufficient cars to transport such wood: *provided*, the same shall be loaded and unloaded by the owners thereof; *and provided, further*, that the railroad company so carrying wood, shall charge no more for such transportation per cord than is charged in the published tariff of rates for carrying rails, fence posts and railroad ties; *and provided, further*, that no railroad company shall be required to carry such wood during the months of June, September, October and November.

Owner to load wood.

Charges.

When roads need not carry wood.

Approved April 4, 1864.

CHAPTER 483.

[Published May 6, 1864.]

AN ACT to establish and define the liberties of jails, and admitting persons thereto.

The people of the state of Wisconsin, represented in senate and assembly do enact as follows:

SECTION 1. A space of ground, in a square, for a distance of one mile each way from the jail of each county in this state, is hereby set apart and designated as the liberties of jail of each county in this state.

Jail liberties.

SECTION 2. It shall be the duty of the sheriff of each county, as soon as practicable after the passage of this act, to designate by monuments, inclosures or posts, or other visible and permanent marks, at the expense of the county, the extent and limit of such liberties.

Monuments of liberties.

SECTION 3. Every person who shall be in the custody of the sheriff of any county, by virtue, 1st. Of any *capias ad respondendum*, or any order of arrest, in a civil action; or, 2d. Of any execution on a civil action; or, 3d. By virtue of any attachment for the non-payment of costs in a civil action; or, 4th. In consequence of a surrender on exoneration of his bail—shall be entitled to be admitted to the liberties of the jail hereby

Who to be admitted to liberties of jail, on executing bond.

established, upon executing a bond to such sheriff and his assigns, as prescribed in the next section.

Penalty of bond. SECTION 4. Such bond shall be executed by the prisoner and one or more sufficient sureties, being inhabitants and householders of the county, in a penalty which shall be as follows: 1st. It shall not be less than double the amount of the sum in which the sheriff was required to hold the defendant to bail, if he be in custody on mesne process, or order of arrest, or be surrendered in exoneration of his bail, before judgment docketed against him; 2d. It shall not be less than double the amount directed to be levied by the execution or attachment, if he be in custody upon attachment or execution; 3d. It shall not be less than double the amount for which judgment shall have been rendered against him, if he be surrendered after judgment docketed.

Condition of bond. SECTION 5. Such bond shall be conditioned, that the person so in custody of such sheriff, shall remain a true and faithful prisoner, and shall not at any time or in any manner escape or go without the limits and boundaries of the liberties established for the jail of such county, until discharged by due course of law.

Validity of bond, &c. SECTION 6. Every such bond taken for the liberties of any jail, shall be valid, and shall be held for the indemnity of the sheriff taking the same, and of the party at whose suit the prisoner executing such bond shall be confined.

Sheriff may require new sureties. SECTION 7. If a sheriff who shall have taken any such bond for the liberties of any jail, shall discover that any surety to such bond is insufficient, he may commit the prisoner who executed the same to close confinement in such jail, until other good and sufficient sureties shall be offered.

Surrender of principal by sureties. SECTION 8. The sureties in any bond given for the liberties of any jail, may surrender their principal at any time before judgment shall have been rendered against them on such bond, but such bail shall not be exonerated thereby from any liability incurred before the making of such surrender.

How surrender may be made. SECTION 9. Such surrender may be made as follows: The bail may take their principal to the keeper of the jail, and upon the written requirement of such bail, the keeper shall take such principal into his custody, and thereupon indorse upon the bond given for the limits,

an acknowledgment of the surrender of such principal ; and such keeper shall also, if required, give the bail a certificate acknowledging such surrender.

SECTION 10. The going at large of any prisoner who shall have executed such bond, or of any prisoner who would be entitled to the liberties of any jail upon executing such bond, within the limits of the liberties of the jail of the county in which he shall be in custody, shall not be deemed an escape of such prisoner ; but in case any such prisoner shall go at large without the jail liberties of such county, without the assent of the party at whose suit such prisoner shall be in custody, the same shall be deemed an escape and forfeiture of the bond so executed ; and the sheriff in whose custody such prisoner shall have been, shall have the same authority to pursue and retake such prisoner as if such escape had been made from the jail.

Use of the liberties of jail, not an escape.

What deemed an escape.

SECTION 11. In every suit brought by a sheriff on such bond, the defendants may plead a voluntary return of the prisoner to the jail from which he escaped, or the liberties thereof, or the recapture of such prisoner by the sheriff from whose custody he escaped, before the commencement of such suit, and may give evidence thereof in bar of such action ; and such defendants shall be entitled to make such or any other defense to such suit which might be made by such sheriff to an action against him for such escape.

Plea of defendants in suit brought on bond.

SECTION 12. But if an action shall have been brought against such sheriff for such escape, and due notice thereof shall have been given to the prisoner and his sureties who executed the bond for the jail liberties, the judgment against such sheriff shall be conclusive evidence of his right to recover against such prisoner and his sureties, to whom such notice was given in the action on such bond, as to all matters which were or might have been controverted in the action against the sheriff.

In case of escape, sheriff may recover against prisoner and his sureties.

SECTION 13. In every such action brought by a sheriff on a bond executed for the jail liberties, if it shall appear to the court that judgment has been rendered against such sheriff for the escape of the prisoner, and that due notice of the pendency of the action against the sheriff was given to the prisoner and his sureties, to enable them to defend the same, such court shall render judgment in the suit upon such bond at the

When judgment to be rendered in such action.

same time in which the writ by which such action shall be commenced, shall be returned served.

Filing complaint and notice of motion.

SECTION 14. But to entitle any sheriff to move for such judgment, he shall have filed a complaint, and shall show to the court that he had given twenty days' notice of such motion.

When proceedings to be suspended.

SECTION 15. If it shall appear on the hearing of such motion, that the defendants have any meritorious cause of defense, which was not controverted in the action against the sheriff, and which by law could not have been so controverted, the court shall suspend proceedings on such judgment until a trial in such action be had, but such judgment shall remain as a security for the sheriff.

When judgment shall be vacated.

SECTION 16. If such defense be established, the court shall vacate such judgment and render judgment as in other cases.

Costs and expenses.

SECTION 17. In every action brought by a sheriff on such bond, the recovery of a judgment against him for the escape of the prisoner, shall be evidence of the damages sustained by him, in the same manner as if such judgment had been collected, and such sheriff shall be entitled to recover the costs and his reasonable expenses in defending the suit against him, as part of his damages.

Assignment of bond.

SECTION 18. If any such bond shall be forfeited, the party at whose suit the person executing the same shall have been confined, or in case of his death, the executors or administrators of such party, shall be entitled to an assignment thereof, which shall be made by the sheriff taking the same, or in case of a vacancy in his office, by his under sheriff, by an indorsement on such bond, executed in the presence of one or more witnesses.

Assignee may maintain action, &c.

SECTION 19. The party to whom such assignment shall have been made, may maintain an action on such bond, as assignee of the sheriff taking the same, in the same cases in which such action might be maintained by such sheriff, and upon obtaining judgment therein, he shall recover damages for such breaches of the condition as shall have been assigned by him, as follows: 1st. If the prisoner escaping was confined by virtue of an execution, or by virtue of an attachment for non-payment of costs, the measure of the plaintiff's damages shall be the amount directed to be levied by such

execution or attachment, with interest thereon to the time of such recovery. 2d. If the prisoner was confined by virtue of a *capias ad respondendum*, or order of arrest, or upon a surrender in exoneration of his bail, made before or after judgment rendered against him, the plaintiff shall recover only the actual damages sustained by him.

SECTION 20. The acceptance of an assignment of any such bond, shall be a bar to any action by or on behalf of the party receiving such assignment, against the sheriff or other officer making the same, for any escape by the prisoner executing such bond, amounting to a breach of such bond.

Acceptance of assignment, bar to action against sheriff.

SECTION 21. In every action brought by the assignee of such bond, the defendants shall be entitled to plead a voluntary return of the prisoner to the liberties of the jail before the commencement of such action, in bar thereof, and to make any defense which they would be entitled to make if such action had been brought in the name and for the benefit of the sheriff to whom such bond was executed.

Defense of defendants.

SECTION 22. In case the party at whose suit any person shall have been confined to the liberties of a jail, shall refuse or neglect to take an assignment of the bond executed by such person, as hereinbefore provided, and shall prosecute any sheriff for the escape of such person, the court in which such action shall be pending shall by order stay all the proceedings upon the judgment against such sheriff until he shall have had a reasonable time to prosecute the bond taken by him, and to collect the amount of any judgment he may recover thereon.

Stay of proceedings against sheriff.

SECTION 23. But the last preceding section shall not extend to authorize such stay of proceedings in any action where the judgment shall have been recovered against any sheriff for any escape committed with the assent, aid or assistance of such sheriff.

Not applicable.

SECTION 24. This act shall take effect and be in force from and after its passage and publication.

Approved April 4, 1864.