

CHAPTER 303.

EXECUTIONS.

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303.01 Execution, stay. The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided and for the following periods of time, to be calculated from the date of the judgment, but a longer period may be agreed upon:

- (1) If the judgment be for a sum not exceeding ten dollars, exclusive of costs, one month;
- (2) If it be for any sum above ten dollars, and not exceeding thirty dollars, two months;
- (3) If it be for any sum above thirty dollars, and not exceeding fifty dollars, three months;
- (4) If it be for any sum above fifty dollars, four months; provided, that execution shall not be stayed upon a judgment rendered against a corporation, or for manual labor performed by the party in whose favor the same is rendered; nor upon any judgment rendered under the provisions of sections 303.25 and 303.26, except at the option of the plaintiff, but execution may issue forthwith.

303.02 Security to be given. To entitle such person to such stay of execution some responsible person, to be approved by the justice and not being a party to the judgment, must, within five days after the rendition of the judgment, enter into a recognizance before the justice to the adverse party in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment.

303.03 Form of recognizance. Such recognizance must be signed by the person entering into the same and may be in the following form:

I,, acknowledge myself indebted to, in the sum of dollars, to be void upon this condition: Whereas, obtained judgment before, a justice of the peace of the town of , in the county of , on the day of , 19. ., against; now if such judgment, costs and interest shall be paid at the expiration of months from the time it was rendered this recognizance shall be void.

A. B.

303.04 Execution to be revoked. If a judgment be stayed in the manner above prescribed after an execution has been issued thereon the justice shall revoke such execution in the same manner and with like effect as he is hereinafter directed to revoke an execution after an appeal has been allowed and, if the defendant has been committed, shall order him to be discharged from custody.

303.05 Issue of execution after stay expired. If, at the expiration of such stay, the judgment be not paid the execution shall issue against both the principal and bail; if the principal do not satisfy the execution and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money collected by him on the execution was collected by him from the bail and the time when the same was received.

303.06 Rights of bail against principal. After the return of such execution the bail shall be entitled, on motion, to a judgment before the justice for the amount collected from him in satisfaction of such execution, with interest thereon at twelve per cent per annum; and such return of the officer, upon motion, shall be evidence of the facts therein stated; no such motion shall be made after three months from the return of the execution.

303.07 Execution within five years. Upon every judgment rendered by a justice, except when stayed as aforesaid, execution shall be issued by such justice or his successor

in office, or any other justice lawfully having custody of the docket containing such judgment, in the manner hereinafter prescribed at any time, upon demand, within five years from the rendition of such judgment.

303.08 Execution against the body. An execution may be issued against the person of the defendant when the action in which judgment is rendered is founded on tort or is for a penalty or forfeiture upon a statute, and in no other case; but no execution shall issue against the person of any female upon any justice's judgment in any civil action.

303.09 Execution, what to direct. The execution shall command the officer to collect the damages and costs, together with the interest thereon, of the goods and chattels of the person against whom the execution shall be granted (except such as are exempted by law from execution), and to pay the money within thirty days from its date to the justice who issued the execution, to render to the party who recovered the same; and if the execution be issued against a male person, in case where imprisonment is authorized by law, it shall command the sheriff or constable that if no goods or chattels can be found, or not sufficient to satisfy such execution, then to take the body of the person against whom the execution shall be issued and convey him to the common jail of the county there to remain until such execution shall be satisfied and paid or he be otherwise discharged according to law.

303.10 Forms. Executions may be in the following form:

EXECUTION AGAINST GOODS.

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

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

Whereas, judgment against, for the sum of, lawful money of the United States, and for, costs of suit, was recovered the day of, A. D. 19.., before me at the suit of, these are, therefore, to command you to seize the goods and chattels of the said (excepting such as the law exempts), and make sale thereof according to law in such case made and provided, to the amount of the said sums, with interest thereon, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said for his judgment and costs. Hereof fail not under the penalty of the law.

Given under my hand the day of, in the year 19...

J. P., Justice of the Peace.

EXECUTION AGAINST GOODS AND THE BODY.

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

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

Whereas, judgment against, for the sum of, lawful money of the United States, and for, costs of suit, was recovered the day of, A. D. 19.., before me at the suit of, these are, therefore, to command you to seize the goods and chattels of the said (excepting such as the law exempts), and make sale thereof according to law in such case made and provided, to the amount of the said sums with interest thereon, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said, for his said judgment and costs; and for want of such goods and chattels take the body of the said and him convey and deliver unto the keeper of the common jail of said county, who is hereby commanded to receive and keep the said in safe custody in said jail until the aforesaid sums, with interest thereon and all legal expenses, be paid and satisfied or until he be discharged thence by due course of law. Hereof fail not under the penalty of the law.

Given under my hand the day of, in the year 19...

J. P., Justice of the Peace.

EXECUTION AGAINST THE GOODS OF PRINCIPAL AND SURETY.

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

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

Whereas, judgment against, for the sum of, lawful money of the United States, and, costs of suit, was recovered the day of, A. D. 19.., before me at the suit of, and became security to pay the said judgment, with interest on the same, in months from the day of aforesaid agreeable to law, as appears of record; in the payment of which the said and have failed; these are, therefore, to command you to seize the goods and chattels of said and (excepting such as the law exempts), and make sale thereof according to law in such cases made and provided, to the amount of such sums with interest thereon, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said for his said judgment and costs. Hereof fail not under the penalty of the law.

Given under my hand this day of, in the year 19 . . .

J. P., Justice of the Peace.

303.11 Entry in docket; indorsement. Before any execution shall be delivered the justice shall state in his docket and also on the back of the execution the amount of the debt or damages and costs separately; and the officer receiving such execution shall indorse thereon the time and the receipt of the same.

303.12 Renewal of execution. If an execution be not satisfied it may, at the request of the plaintiff, be renewed from time to time, either before or after the return day thereof, by the justice issuing the same, by an indorsement to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force in all respects for thirty days and no longer; and an entry of such renewal shall be made in the docket of the justice.

303.13 Further execution. If any execution be returned unsatisfied in whole or in part and shall not be renewed a further execution for the amount remaining due may be issued.

303.14 Execution where all not served. When a judgment shall be obtained against joint debtors upon process which was not served upon all the defendants execution may be issued in form against all; but the justice shall indorse thereon the names of such of the defendants who did not appear in the action and were not served. Such execution shall not be served upon the persons of the defendants whose names are indorsed thereon nor shall it be collected from the sole property of any defendant who neither appeared in the action nor was served with such process; but it may be collected of the several property of any defendant who appeared or was served with process or of the joint or copartnership property of all the defendants, except as provided in subsection (9) of section 272.05, which subdivision shall apply to executions issued out of courts of justices of the peace.

303.15 Officer not to act, when. An officer shall not seize or sell any property or do any other act by virtue of any execution after the time limited therein for its return unless such execution shall have been renewed. Nor shall any officer do any act under a renewed execution after the expiration of the time or times for which the same may have been renewed.

303.16 Receipt for and indorsement of payment. The officer who shall hold any execution shall receive all money tendered in payment thereof and shall indorse the same on the execution and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

303.17 Indorsement of seizure. The officer, after taking goods and chattels into his custody by virtue of an execution, shall indorse thereon the time of seizing the same and a description or list of the property; and such goods and chattels shall be bound from the time they are seized on execution.

303.18 Notice of sale. The officer shall, without delay, give public notice by at least three advertisements, signed by himself and put up at three public places in the town where the property is sold, of the time and place when and where the same shall be exposed to sale; which notice shall describe the goods and chattels taken and shall be put up at least ten days before the day of sale.

303.19 Sale to highest bidder. At the time and place so appointed or at such other time as the sale may be adjourned to, within the life of the execution, the goods and chattels being present and pointed out to the inspection and examination of the bidders, the officer shall expose them to sale by vendue to the highest bidder.

303.20 Officer not to purchase. No constable shall, directly or indirectly, purchase any goods or chattels upon any sale made by him upon execution; and every such purchase shall be absolutely void.

303.21 Return of execution. The officer shall return the execution and pay the debt or damages and costs collected to the justice who issued the same, or in case of his death, absence or removal from office, then to the justice having custody of his docket, returning the surplus, if any, to the person against whom the execution issued.

303.22 Body, when taken. For want of goods and chattels to satisfy the execution the officer shall, if the execution require it, take the body of the person against whom the execution shall have issued and convey him to the common jail of the county; and the keeper thereof is hereby required to keep such person in safe custody in jail until the debt or damages and costs shall be paid or he be thence discharged by due course of law.

303.23 Proceedings after officer's term. Every constable to whom any execution shall have been delivered and whose term of office shall expire before the time within which the return or collection of such execution is required by law shall proceed thereon in the same manner and shall have the same power in relation thereto as if his term of office had not expired; and such constable and his sureties shall be liable for any neglect of duty and

for moneys collected upon such execution, in the same manner and to the same extent as if the term of office of such constable had not expired.

303.24 Property of principal debtor first taken. Every officer having an execution in his hands for collection, upon an affidavit being served upon him, made by any codefendant in such execution, his agent or attorney, showing the principal debtor therein, shall first exhaust all the personal estate of said principal debtor which may be turned out by any one of the defendants before selling the property of any other defendant who may be surety in the demand upon which judgment was rendered.

303.25 Neglect to return execution. If an officer neglect to return an execution within five days after the return day thereof or shall neglect to serve the same the party in whose favor the same was issued may maintain an action against such officer, and shall recover therein the amount of the execution, with interest from the time of the rendition of the judgment upon which the same was issued.

Note: In an action against a sheriff for neglect to return an execution within the time required, evidence that the judgment debtor mentioned in the execution was insolvent, offered in mitigation of damages, is inadmissible, since the statute provides for recovery of the amount of the execution. The word "officer," in this section, is construed to include both a sheriff and a constable. *Ditsch v. Finn*, 214 W 305, 252 NW 562.

303.26 Action for not paying money. If moneys be collected by a constable upon an execution and not paid over by him according to law an action may be maintained by the party entitled to such money, in his own name, upon the instrument of security given by such constable and his sureties according to law, and in such action the amount so collected, with interest from the time of collection, shall be recovered.

303.27 Garnishment upon execution. If there be no property found or if the property seized be not sufficient to satisfy the execution, and if the plaintiff or some other person in his behalf shall make and deliver to the officer having such execution an affidavit stating that he has good reason to believe that any person (naming him) is indebted to the defendant or has property in his possession belonging to the defendant, or when there is more than one defendant, to any or either of them, not by law exempt from seizure and sale upon execution, and demand that he summon such person as garnishee, such officer shall summon such person in writing to appear before the justice on the return day of such execution to answer touching his liability as garnishee. On receipt of such affidavit such officer shall forthwith serve a garnishee summons upon such person, which service shall be made at least six days before the return day of the execution, and he shall return such affidavit and summons and his doings thereon, and like proceedings shall be had before the justice against such garnishee as in other garnishee actions in a justice's court.