

CHAPTER 303.

EXECUTIONS.

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303.01 Execution; stay. (1) If the undertaking mentioned in section 303.02 is given, execution upon the judgment shall be stayed for 60 days calculated from its date but a longer period may be agreed upon.

(2) Except upon appeal, execution shall not be stayed upon a judgment against a corporation, or for manual labor performed by the creditor; nor upon a judgment under sections 303.25 and 503.26. [*R. S. 1849 c. 88 s. 163, 191; R. S. 1858 c. 120 s. 179, 180; 1874 c. 142; R. S. 1878 s. 3674; Stats. 1898 s. 3674; Stats. 1925 s. 303.01; 1945 c. 441*]

Comment of Advisory Committee, 1945: no good reason for such an exception. (Bill Old 303.01 has 4 steps; that is too many. It is streamlined by making a 60-day period the general rule. The exception in old (4) is omitted because its meaning, if it has any, is doubtful and because there appears to be

Note: Party obtaining stay of execution is not estopped from appealing from judgment. *Gardipie v. Lessard*, 9 W 221.

303.02 Undertaking to be given. To obtain such stay of execution some responsible person, approved by the justice and not a party to the judgment, must, within 5 days after judgment is rendered, execute an undertaking before the justice as provided in section 303.03. [*R. S. 1849 c. 88 s. 192; R. S. 1858 c. 120 s. 181; R. S. 1878 s. 3675; Stats. 1898 s. 3675; Stats. 1925 s. 303.02; 1945 c. 441*]

303.03 Form of undertaking. The undertaking must be signed by the surety and may be in substantially the following form:

Whereas, obtained judgment before, a justice of the peace at , county of , on the day of , 19. . . , against, I agree that if such judgment, costs and interest are not paid before the expiration of 60 days from said date, execution may issue against me as provided by section 303.05, Wisconsin Statutes.

(signed) A. B.

A. B. is approved as surety.

., Justice of the Peace.

[*R. S. 1849 c. 88 s. 193; R. S. 1858 c. 120 s. 182; R. S. 1878 s. 3676; Stats. 1898 s. 3676; Stats. 1925 s. 303.03; 1945 c. 441*]

Comment of Advisory Committee, 1945: place for the justice's approval should be "undertaking" is substituted for "recognition." This is for a layman to sign. Reference to the statutes would seem wise. A

303.01, as revised. (Bill 193-S)

303.04 Execution revoked. If a judgment is stayed after an execution has issued the justice shall revoke the execution and, if the defendant has been committed, the justice shall order him discharged. [*R. S. 1849 c. 88 s. 183; R. S. 1858 c. 120 s. 185; R. S. 1878 s. 3677; Stats. 1898 s. 3677; Stats. 1925 s. 303.04; 1945 c. 441*]

303.05 Issue of execution after stay expired. At the expiration of the stay, if the judgment has not been paid, execution may issue against both the debtor and the surety; if the debtor does 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 surety, and in his return shall state what amount was collected from the surety and the time it was received. [*R. S. 1849 c. 88 s. 194; R. S. 1858 c. 120 s. 183; R. S. 1878 s. 3678; Stats. 1898 s. 3678; Stats. 1925 s. 303.05; 1945 c. 441*]

Comment of Advisory Committee, 1945: stated because the motion for judgment must Requires the "time" it was collected to be be made within 3 months; 303.06. (Bill 193-S)

303.06 Rights of surety against principal. Upon the return of the execution the surety may, on notice and motion, have judgment against the debtor before the justice for

the amount collected from him by execution, with interest thereon and costs. No such motion shall be made after 3 months from the return of the execution. [R. S. 1858 c. 120 s. 184; R. S. 1878 s. 3679; Stats. 1898 s. 3679; Stats. 1925 s. 303.06; 1945 c. 441]

Comment of Advisory Committee, 1945: "notice of motion." Probably that was im-12 per cent interest is very high now; it was not in 1849. As a general rule judgments draw legal interest, i.e. 6 per cent. That rate results from striking out "at 12 per cent per annum." Express provision is made for

plied. Most of the stricken words are surplusage. It is assumed that the surety would have a right, after the 3 months, to sue to recover what had been collected from the surety. (Bill 193-S)

303.07 Execution within 5 years. Upon every justice court judgment, except when stayed, execution shall be issued by the justice lawfully having custody of the judgment docket at any time, upon demand, within 5 years from its rendition. [R. S. 1849 c. 88 s. 187; R. S. 1858 c. 120 s. 175; 1863 c. 286 s. 2; R. S. 1878 s. 3680; Stats. 1898 s. 3680; Stats. 1925 s. 303.07; 1945 c. 441]

303.08 Execution against the body. An execution may issue against the person of the defendant when the action is founded on tort or is for a statutory penalty or forfeiture; but no body execution shall issue against a female person. [R. S. 1849 c. 88 s. 188, 209; R. S. 1858 c. 120 s. 176, 200; R. S. 1878 s. 3681; Stats. 1898 s. 3681; Stats. 1925 s. 303.08; 1945 c. 441]

303.09 Execution, what to direct. The execution shall command the officer to collect the judgment, and interest thereon, out of the personal property of the judgment debtor not exempt by law from execution, and to pay the money within 30 days from its date to the justice who issued the execution; and if imprisonment is authorized, it shall command the officer that if no personal property can be found sufficient to satisfy the execution, then to arrest the judgment debtor and convey him to the county jail, there to remain until the execution is satisfied or he is otherwise discharged according to law. [R. S. 1849 c. 88 s. 189; R. S. 1858 c. 120 s. 177; R. S. 1878 s. 3682; Stats. 1898 s. 3682; Stats. 1925 s. 303.09; 1945 c. 441]

Note: A will which devised all real and personal property which should remain after payment of his just debts and funeral expenses did not charge the homestead with the payment of debts. Pym v. Pym, 118 W 662, 96 NW 429.

This section does not give the officer full thirty days in which to collect the amount due and allow him to make his return on the thirty-first day. The day on which the execution is issued is excluded in computing the time. McDonald v. Vinette, 58 W 619, 17 NW 319.

303.10 Forms. Executions may be in substantially the following form:

EXECUTION AGAINST GOODS

State of Wisconsin, } In Justice Court
 County. } Before, Justice of the Peace

The State of Wisconsin, to the sheriff or any constable of said county:

Whereas, judgment against, for the sum of \$, was recovered the day of, 19 .., before me by, you are commanded to seize and sell sufficient of the personal property of said (excepting such as the law exempts) to satisfy the judgment with interest, together with 25 cents for this execution, and return the same to me within 30 days, to be rendered to said for his judgment and costs.

Dated, 19...

...., Justice of the Peace.

EXECUTION AGAINST GOODS AND THE BODY

State of Wisconsin, } In Justice Court
 County. } Before, Justice of the Peace

The State of Wisconsin, to the sheriff or any constable of said county:

Whereas, judgment against, for the sum of \$, was recovered the day of, 19 .., before me by, you are commanded to seize and sell sufficient of the personal property of said (excepting such as the law exempts) to satisfy the judgment with interest, together with 25 cents for this execution, and return the same to me within 30 days, to be rendered to said for his judgment and costs; and for want of such property, arrest said and deliver him to the keeper of the county jail, who is hereby commanded to receive and keep him in said jail until the aforesaid sums, with interest and all legal expenses, are paid or until he is discharged by due course of law.

Dated, 19...

...., Justice of the Peace.

EXECUTION AGAINST THE GOODS OF PRINCIPAL AND SURETY

State of Wisconsin, } In Justice Court
 County. } Before, Justice of the Peace

The State of Wisconsin, to the sheriff or constable of said county:

Whereas, judgment against, for the sum of \$, was recovered the day of, 19 .., before me by; and became surety to pay the

judgment, with interest, within 60 days from said date; and said debtor and surety have failed to make payment; you are commanded to seize and sell sufficient of the personal property of said and (excepting such as the law exempts) to satisfy the judgment with interest, together with 25 cents for this execution, and return the same to me within 30 days, to be rendered to said for his judgment and costs.

Dated , 19 . . .

., Justice of the Peace.

[*R. S. 1849 c. 88 s. 190; R. S. 1858 c. 120 s. 178; R. S. 1878 s. 3683; Stats. 1898 s. 3683; Stats. 1925 s. 303.10; 1945 c. 441*]

303.11 Indorsement on execution. The officer receiving the execution shall indorse thereon the time he received it. [*R. S. 1849 c. 88 s. 195; R. S. 1858 c. 120 s. 186; R. S. 1878 s. 3684; Stats. 1898 s. 3684; Stats. 1925 s. 303.11; 1945 c. 441*]

303.12 Renewal of execution. If an execution is not satisfied it may be renewed at the request of the judgment creditor 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, dated when the same is made. If any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution. Every indorsement shall renew the execution in full force for 30 days. [*R. S. 1849 c. 88 s. 196; R. S. 1858 c. 120 s. 187; R. S. 1878 s. 3685; Stats. 1898 s. 3685; Stats. 1925 s. 303.12; 1945 c. 441*]

Comment of Advisory Committee, 1945: Renewals must be entered in the docket under 300.07 (13). (Bill 193-S)

303.13 Additional executions. If an execution is returned unsatisfied in whole or in part a further execution for the amount remaining due may be issued. [*R. S. 1849 c. 88 s. 199; R. S. 1858 c. 120 s. 190; R. S. 1878 s. 3686; Stats. 1898 s. 3686; Stats. 1925 s. 303.13; 1945 c. 441*]

[*303.14 repealed by 1945 c. 441*]

303.15 When officer not to act. An officer shall not do any act by virtue of any execution or renewal thereof after the time limited therein for its return. [*R. S. 1849 c. 88 s. 211; R. S. 1858 c. 120 s. 202; R. S. 1878 s. 3688; Stats. 1898 s. 3688; Stats. 1925 s. 303.15; 1945 c. 441*]

303.16 Receipt for payment and indorsement. The officer who holds any execution shall receive all money tendered in payment thereof and shall indorse the same on the execution and give the payor a receipt therefor, specifying, if demanded, on what account the same was paid. [*R. S. 1849 c. 88 s. 208; R. S. 1858 c. 120 s. 199; R. S. 1878 s. 3689; Stats. 1898 s. 3689; Stats. 1925 s. 303.16; 1945 c. 441*]

303.17 Indorsement of seizure. The officer, after seizing property by virtue of an execution, shall indorse on the execution the time of seizure and a description of the property. [*R. S. 1849 c. 88 s. 200; R. S. 1858 c. 120 s. 191; R. S. 1878 s. 3690; Stats. 1898 s. 3690; Stats. 1925 s. 303.17; 1945 c. 441*]

303.18 Notice of sale. The officer, without delay, shall prepare and sign a notice stating the time and place of sale of the described property and at least 10 days before the day of sale he shall post the notice at 3 public places in the town where the property is to be sold. [*R. S. 1849 c. 88 s. 201; R. S. 1858 c. 120 s. 192; R. S. 1878 s. 3691; Stats. 1898 s. 3691; Stats. 1925 s. 303.18; 1945 c. 441*]

303.19 Sale to highest bidder. At the time and place so appointed or at such time as the sale may be adjourned to, within the life of the execution, the property being present and pointed out to the inspection and examination of the bidders, the officer shall sell it to the highest bidder. [*R. S. 1849 c. 88 s. 202; R. S. 1858 c. 120 s. 193; R. S. 1878 s. 3692; Stats. 1898 s. 3692; Stats. 1925 s. 303.19; 1945 c. 441*]

303.20 Officer not to purchase. No officer shall purchase, directly or indirectly, any property upon any sale made by him upon execution; and every such purchase shall be void. [*R. S. 1849 c. 88 s. 204; R. S. 1858 c. 120 s. 195; R. S. 1878 s. 3693; Stats. 1898 s. 3693; Stats. 1925 s. 303.20; 1945 c. 441*]

303.21 Return of execution; surplus. The officer shall return the execution and, after deducting the expense of sale, pay the judgment and costs collected to the justice having custody of the docket, returning the surplus, if any, to the judgment debtor. [*R. S. 1849 c. 88 s. 203; R. S. 1858 c. 120 s. 194; R. S. 1878 s. 3694; Stats. 1898 s. 3694; Stats. 1925 s. 303.21; 1945 c. 441*]

Comment of Advisory Committee, 1945: The officer should get his expenses first. He probably does. (Bill 193-S)

303.22 Body, when taken. For want of property to satisfy the execution the officer shall, if the execution requires it, take the body of the execution debtor and convey him to the county jail; and the keeper thereof shall keep him in jail until the debt and costs are

paid or he is discharged. [*R. S. 1849 c. 88 s. 205; R. S. 1858 c. 120 s. 196; R. S. 1878 s. 3695; Stats. 1898 s. 3695; Stats. 1925 s. 303.22; 1945 c. 441*]

303.23 Proceedings after officer's term. Every constable to whom any execution has been delivered and whose term of office expires before the time within which the return of the execution is required shall proceed thereon the same as if his term of office had not expired; and he and his sureties shall be liable for any neglect of duty and for moneys collected upon the execution, the same as if his term of office had not expired. [*R. S. 1849 c. 88 s. 281; R. S. 1858 c. 120 s. 251; R. S. 1878 s. 3696; Stats. 1898 s. 3696; Stats. 1925 s. 303.23; 1945 c. 441*]

Comment of Advisory Committee, 1945: 303.23 does not apply to the sheriff. Sheriffs come under 59.33. (Bill 193-S)

303.24 Property of principal debtor first taken. Every officer having an execution for collection, upon being served with an affidavit, made by any codefendant in the execution, or his attorney, showing the principal debtor therein, shall first exhaust all the personal property of the principal debtor before selling the property of any defendant who is surety in the demand upon which judgment was rendered. [*R. S. 1849 c. 88 s. 282; R. S. 1858 c. 120 s. 252; R. S. 1878 s. 3697; Stats. 1898 s. 3697; Stats. 1925 s. 303.24; 1945 c. 441*]

303.25 Neglect to return execution. If an officer neglects to return an execution within 5 days after the return day or neglects to serve it, the party in whose favor it was issued may maintain an action against the officer, and shall recover the amount of the execution, with interest from the date of the judgment. [*R. S. 1849 c. 88 s. 210; R. S. 1858 c. 120 s. 201; R. S. 1878 s. 3698; Stats. 1898 s. 3698; Stats. 1925 s. 303.25; 1945 c. 441*]

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 money collected by an officer upon an execution is not paid over by him according to law, an action may be maintained by the party entitled to the money, in his own name, upon the officer's bond, and in such action the amount collected with interest from the time of collection, shall be recovered. [*R. S. 1849 c. 88 s. 212; R. S. 1858 c. 120 s. 203; R. S. 1878 s. 3699; Stats. 1898 s. 3699; Stats. 1925 s. 303.26; 1945 c. 441*]

[*303.27, as amended by Supreme Court Order, effective July 1, 1945, repealed by 1945 c. 441*]