

driver, the sum of seventy-five cents. For cattle, horses or mules, in droves, the sum of fifteen cents each. For each foot passenger, the sum of ten cents. For swine or sheep, in droves, the sum of five cents each. On all freight, merchandize or other property, not in teams, at the rate of twenty-five cents per hundred pounds, when the same is delivered by one person, and does not exceed two hundred pounds; and for any excess of two hundred pounds, at the rate of ten cents per hundred pounds; on all lumber at the rate of fifty cents per thousand feet: *provided, however*, that double the above rates may in all cases be charged between the hours of seven o'clock, P. M., and five o'clock, A. M.

When may charge double rates.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved March 19, 1873.

CHAPTER 263.

[*Published March 27, 1873.*]

AN ACT to prescribe the measure of damages in certain actions for the wrongful cutting of timber.

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

Owner to recover highest market price for timber wrongfully cut on his premises.

SECTION 1. In all actions hereafter commenced in any of the courts of this state to recover the possession of logs, timber or lumber wrongfully cut from the lands of the plaintiff, or to recover the value thereof, or damages for such cutting, if the plaintiff shall succeed, he shall, unless possession of such property be restored to him, recover as damages the highest market value of such logs, timber or lumber, in whatsoever place, shape or condition, manufactured or unmanufactured, the same may be between the time of such cutting and the time of the trial of the action, and while it remained in the possession of the party so cutting the same, or any purchaser thereof with knowledge of such wrongful cutting: *provided*, that the defendant may, within ten days after the service of the complaint in such action, serve upon the plaintiff an affidavit that such cutting was done by mistake, and a tender of judgment a sum certain as being the full value of such logs, timber or lumber at the time the same were cut, with interest thereon from the time of such cutting to the date of such

Defendant may serve affidavit of cutting timber by mistake, and tender damages.

tender, and ten per cent. upon the whole amount as damages, together with the cost of such action to the time of such tender, in full satisfaction for such cutting.

If the plaintiff shall accept such tender, judgment for the amount thereof may be entered against the defendant in favor of the plaintiff by the clerk in vacation, upon filing the complaint, and such tender, together with the plaintiff's acceptance of the same. If the plaintiff shall refuse to accept such tender, he shall notify the defendant thereof, and within twenty days from such tender, serve a traverse of the allegations of such affidavit that such cutting was by mistake. Upon the trial of such action such traverse shall be tried separately, or with the other issues in the action as the court shall direct, and for that purpose the court may order the jury to find a special verdict. If it shall be found upon the trial that the amount of the sum certain, for which judgment was so tendered, was equal to the value of such logs, timber or lumber when so cut, and that the cutting was by mistake, judgment shall be entered for the plaintiff for the amount of such tender against the defendant, less the cost of such action since the date of such tender, to be taxed in favor of the defendant. If the jury find that such cutting was by mistake, but that the value of such logs, timber or lumber was greater than the amount so tendered, then judgment shall be entered in favor of the plaintiff for the amount so found, with ten per cent. damages and costs of such action. If such action shall be against several defendants, not alike liable, either or any of such defendants may serve in such tender and subsequent defense, and thereupon the several proceedings and issues shall be had, tried and disposed of separately in the manner hereinbefore provided.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved March 19, 1873.

If tender is accepted, judgment may be entered. If refused, shall notify defendant.

How action to be tried.

How judgment to be entered.

How proceed in case of several defendants