

be drawn on account of such levy except upon the certificate of the county treasurer that the money produced by such levy has come to his hands to pay such order.

SECTION 5. This act shall take effect and be in force from and after its passage and publication.

Approved June 9, 1905.

No. 465, A.]

[Published June 12, 1905.

CHAPTER 328.

AN ACT to provide a remedy for an accounting and discovery of all license fees due the state from railroad companies and the enforcement of the collection thereof.

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

Actions to be commenced in Dane county; no change of venue.

SECTION 1. The attorney general is hereby authorized and directed to commence civil actions in the circuit court for Dane county in the name of the state against every railroad company or person now or heretofore operating a railway or railroad in this state, which has failed or neglected to pay the state all license fees required of it to be paid by the provisions of any law of this state now in force or which has heretofore been in force. No change of venue shall be taken in any such action to any other county, but if an affidavit of prejudice be made and filed, or if the judge of said court be for any other reason disqualified to hear, try and determine such action, he shall call in a circuit judge from some other judicial circuit of this state, who shall hear, try and determine such action.

Complaint. SECTION 2. The complaint in each such action may demand a discovery under oath, and an accounting and such other or further relief as may be deemed necessary to enforce the collection of any and all sums found by the court to be unpaid. It may state in substance that the defendant has failed and neglected to pay the license fees, or some part thereof,

required of it or him by law to be paid and still continues in such neglect and failure and that such license fees or a part thereof are still unpaid, and shall specify particularly the year or years in which the defendant has so failed and neglected to pay such license fees or a part thereof and which are still unpaid, and shall state the amount of the gross earnings reported by the defendant to the state treasurer for each year immediately next preceding the one for which such license fees or a part thereof are claimed to be unpaid and the amount of license fees paid for the license for each of such years last named; that the knowledge and information relating to the amount of gross earnings of defendant for each such preceding year and the records, books, vouchers and papers showing or relating to such gross earnings are within the possession and under the control of the defendant, and that in order to determine the amount of the gross earnings for each such preceding year it will be necessary that defendant discover under oath and account for the true amount of such gross earnings, and that such discovery and accounting necessarily involves the examination of a long account; that the plaintiff is not informed and does not know the amount of such gross earnings. The complaint in any such action may also allege in substance that the license or licenses issued to the defendant for any such year or years was or were procured by the fraud and misrepresentation of the defendant and in addition thereto that the application of any payment or payments made thereon was procured to be made by the false and fraudulent representation of the defendant, stating the facts showing such fraudulent representation. Said complaints shall be signed by the attorney general as the attorney for the plaintiff, but need not be verified.

Answer. SECTION 3. The answer of defendant must be verified and shall contain, among other allegations, statements and defenses which may be set forth therein, a full, true and complete discovery under oath and a true and accurate account of all moneys received by it in the operation of its railroad for each of the years next preceding the year as to which it is claimed in the complaint that license fees or any part thereof remain unpaid, without any deduction therefrom for rebates, commissions, switching, demurrage, car, track or terminal rentals, or car service, or for any purpose whatsoever.

Proceedings. SECTION 4. The proceedings in each such action shall be in accordance with the rules and practices now in

force in equity cases in this state, except in so far as otherwise provided in this act. And notwithstanding the discovery hereinbefore provided for, the provisions of section 4096 of the statutes of 1898, and acts amendatory thereto and thereof, shall apply to such actions and a compliance therewith may be required in any other state or territory, provided the law or practices of such other state or territory permits or sanctions such compliance.

Collection of penalties and forfeitures against railroad company; release of defendant from. SECTION 5. Nothing in this act contained shall affect the right of the state to enforce the collection of any penalty or forfeiture against any railroad company, provided by law. But the governor, secretary of state and attorney general may release, if in their judgment the best interests of the state require it, without terms or upon such terms as to them may seem best, any defendant named in any such suit from any or all penalties or forfeitures prescribed by law by filing the release such as it may determine should be given, if any at all, in the office of the clerk of the circuit court for Dane county in the actions provided for by this act to which the defendant is a party, and by delivering a copy thereof to such defendant. Provided that no such release shall be made in any action unless the governor, secretary of state, and attorney general shall find it necessary, in aid of the collection of the license fees due the state from railroad companies.

Licenses procured by fraud to be declared void; judgment. SECTION 6. If it shall be found by the court that any of the licenses mentioned in the complaint or any application of payment made thereto was procured by fraud or false representation of any defendant named therein, then the courts shall declare such license or licenses void and order the same to be set aside and delivered up and cancelled and all entries thereof cancelled, on the books of the state treasurer and all applications of money thereto made, if so made on account of the fraud or false representation of the defendant, be set aside and declared void and of no effect, and shall apply such payments to the discharge of license fees or a part thereof still remaining unpaid in the order that the same accrued. A judgment shall be entered for the amount found due in accordance with the provisions of this act, together with interest from the time same became due at the rate now provided by law, and for such other and further judgment or relief as the plaintiff may be entitled to upon the evi-

dence, together with the costs and disbursements of the plaintiff in such action which shall be taxed and inserted in the entry of judgment according to the practice in equity cases. But if, upon such accounting, the court shall find that nothing is due the plaintiff, or that any amount is due the defendant, judgment shall be rendered in favor of such defendant for such amount and the costs and disbursements of the action.

Additional remedy for recovery of license fees. SECTION 7. In addition to the remedy hereinbefore provided for the collection of the said license fees and as cumulative thereto said license fees may be recovered by any action or suit at common law or in equity appropriate to the collection of debts.

SECTION 8. This act shall take effect and be in force from and after its passage and publication.

Approved June 10, 1905.

No. 642, A.]

[Published June 13, 1905.

CHAPTER 329.

AN ACT to amend section 492, of the statutes of 1898, as amended by chapter 345, laws of 1903, relating to election of officers in certain free high school districts.

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

District Officers. SECTION 1. Section 492, statutes of 1898, as amended by chapter 345, laws of 1903, is hereby amended to read as follows: Section 492. (Statutes of 1898, as amended by chapter 345, laws of 1903.) The officers of each *free high school* district shall be a director, treasurer and clerk, whose terms shall be each three years beginning with the annual town meetings, and until his successor shall have been chosen; provided that at the first election the clerk shall be chosen for one year, the treasurer for two years and the director for three years, and all of said officers may be chosen first at the same election at which the question of establishing a high school is submitted, to take their offices if the resolution therefor be adopted. Thereafter such officers shall be elected at the annual town meeting or charter election. The votes cast shall be canvassed and the