

costs. *Coldwell v. Sanderson*, 69 W 52, 28 NW 232, 33 NW 591.

A brief containing many statements of an alleged fact contrary to the court's finding without any reference to the record to substantiate them and many statements disrespectful to opposite counsel and abusive of the opposite parties violates a rule of the court. *Gates v. Parmly*, 113 W 147, 87 NW 1096.

A rule of the court requires counsel in their briefs and arguments to be respectful to the trial court. The brief for the appellant is in violation of that rule. *Eureka Steam Heating Co. v. Sloteman*, 69 W 398, 34 NW 387; *Keller v. Town of Gilman*, 93 W 9, 66 NW 800; *Stoll v. Pearl*, 122 W 619, 99 NW 906; *Lynch v. Ryan*, 132 W 271, 111 NW 707; *Casper v. Kalt-Zimmers Mfg. Co.* 159 W 517, 149 NW 754.

Rule 251.82 History: Sup. Ct. Order, 17 W (2d) xv; Stats. 1963 s. Rule 251.82.

Rule 251.83 History: Sup. Ct. Order, 17 W (2d) xv; Stats. 1963 s. Rule 251.83.

Rule 251.84 History: Sup. Ct. Order, 17 W (2d) xv; Stats. 1963 s. Rule 251.84.

Rule 251.85 History: Sup. Ct. Order, 17 W (2d) xv; Stats. 1963 s. Rule 251.85.

Double costs are awarded an opposing party for numerous violations of rules on appeal. *National Farmers Union P. & Cas. Co. v. Maca*, 26 W (2d) 399, 132 NW (2d) 517.

Rule 251.88 History: Sup. Ct. Order, 17 W (2d) xv; Stats. 1963 s. Rule 251.88.

On the duties of a guardian ad litem see *Tyson v. Tyson*, 94 W 225, 68 NW 1015.

Rule 251.89 History: Sup. Ct. Order, 17 W (2d) xv; Stats. 1963 s. Rule 251.89; Sup. Ct. Order, 37 W (2d) x.

Rule 251.90 History: Sup. Ct. Order, 17 W (2d) xv; Stats. 1963 s. Rule 251.90.

Rule 251.91 History: Sup. Ct. Order, 17 W (2d) xvi; Stats. 1963 s. Rule 251.91.

Rule 251.92 History: Sup. Ct. Order, 17 W (2d) xvi; Stats. 1963 s. Rule 251.92.

Rule 251.93 History: Sup. Ct. Order, 17 W (2d) xvi; Stats. 1963 s. Rule 251.93.

Rule 251.94 History: Sup. Ct. Order, 17 W (2d) xvii; Stats. 1963 s. Rule 251.94; Sup. Ct. Order, 41 W (2d) vii.

CHAPTER 252.

Circuit Courts.

252.01 History: R. S. 1878 s. 2418; Stats. 1898 s. 2418; 1903 c. 407 s. 1, 2; Supl. 1906 s. 2418, 2418a; 1913 c. 592, 705; Stats. 1913 s. 113.01; 1915 c. 6; 1917 c. 566 s. 40; 1919 c. 362 s. 31; Stats. 1923 s. 252.01; 1925 c. 5, 12; 1925 c. 454 s. 12; 1935 c. 213; 1951 c. 257, 402; 1953 c. 327, 606.

Revisers' Note, 1878: Section 3, judiciary act of June 29, 1848, so far as applicable.

252.015 History: Stats. 1911 s. 2423e; 1913

c. 592 s. 8; Stats. 1913 s. 113.07 (2); Stats. 1923 s. 252.07 (2); 1953 c. 327 s. 6; Stats. 1953 s. 252.015; 1957 c. 531; 1959 c. 16, 315, 427; 1959 c. 660 s. 67, 68; 1961 c. 33; 1963 c. 399; 1965 c. 256; 1967 c. 275.

The fact that 2 other circuit judges sat with the presiding judge of one branch of the circuit court at his request in investigating charges did not prevent such tribunal from being a judicial body with jurisdiction to punish a witness for contempt, where the proceeding was conducted by the presiding judge, who took entire responsibility for the judgment. *Rubin v. State*, 194 W 207, 216 NW 513.

252.016 History: Stats. 1913 s. 113.07 (3), (4), 113.075; 1915 c. 604 s. 7; Stats. 1915 s. 113.07 (3), (4); 1923 c. 248; Stats. 1923 s. 252.07 (3), (4), (5); 1933 c. 428; 1933 c. 432 s. 2, 3; Spl. S. 1933 c. 9; 1949 c. 6 s. 5 to 8; 1951 c. 247 s. 48; 1953 c. 327 s. 7 to 12; Stats. 1953 s. 252.016; 1959 c. 407; 1959 c. 595 s. 74; 1965 c. 256; 1967 c. 275; 1969 c. 352.

252.017 History: 1969 c. 352; Stats. 1969 s. 252.017.

252.02 History: 1959 c. 315, 660, 685; Stats. 1959 s. 252.017; 1961 c. 33, 495; 1961 c. 642 s. 7m; 1967 c. 275; 1969 c. 352; Stats. 1969 s. 252.02.

252.03 History: 1848 p. 21 s. 5, 9; R. S. 1849 c. 83 s. 6; R. S. 1858 c. 116 s. 4, 5; R. S. 1878 s. 2420; Stats. 1898 s. 2420; 1913 c. 592 s. 3; Stats. 1913 s. 113.03; Stats. 1923 s. 252.03; 1961 c. 495.

Revisers' Note, 1878: This section undertakes to state in a general way the jurisdiction and authority of the circuit courts, from sections 5 and 9, act of 1848, and sections 4 and 5, chapter 116, R. S. 1858. It is only requisite that these powers be stated with sufficient comprehensiveness. The constitution grants their jurisdiction, which cannot probably be increased, though it may be limited by statute.

On judicial power generally see notes to sec. 2, art. VII; on jurisdiction of circuit courts see notes to sec. 8 art. VII; and on general provisions concerning courts of record see notes to various sections of ch. 256.

In criminal as in civil actions, an appeal confers no jurisdiction upon the appellate court, where the lower court had no jurisdiction of the subject-matter of an action. *Klaise v. State*, 27 W 462.

Circuit courts have jurisdiction of proceedings in rem against boats under ch. 116, R. S. 1849. *Steamboat Sultana v. Chapman*, 5 W 454. See also *Steamboat Galena v. Beals*, 5 W 91.

Where a party brings an action in a state court and replevies property from the possession of an officer of a federal court whose jurisdiction over it first attached, the former tribunal has jurisdiction to inquire into the validity of its own proceedings and to enforce a redelivery of the property to the officer from whom it was taken. *Booth v. Ableman*, 16 W 460.

In an action of which a justice had jurisdiction a circuit court may allow an amendment of complaint so as to demand greater

damages than can be adjudged in justice's court. *Felt v. Felt*, 19 W 193.

The entry in the supreme court of an order remanding the cause and the actual remitting of the papers are sufficient to give a circuit court jurisdiction without filing a formal remittitur. *Brucker v. State*, 19 W 539.

A trial court has jurisdiction, notwithstanding the change of judges, to strike out a bill of exceptions improperly settled. *Oliver v. Town*, 24 W 512.

Where the circuit court properly dismisses an action for want of jurisdiction in the court below, it is error to render a judgment against plaintiff for costs. *Blackwood v. Jones*, 27 W 498, 501.

A circuit judge can issue writs of certiorari in vacation. *Wilson v. Heller*, 32 W 457.

A circuit court has jurisdiction of an action to set aside a sale of interest in a patent on the ground that such sale was procured by fraud. *Leonard v. Barnum*, 34 W 105.

A circuit judge has power to allow an alternative writ of mandamus at chambers. *State ex rel. Bement v. Rice*, 35 W 178.

If the justice had no jurisdiction the circuit court cannot acquire it by appeal. *Butler v. Wagner*, 35 W 54; *Cooban v. Bryant*, 36 W 605.

On appeal from a justice court the limit on damages applies unless the appellate court grants leave to increase the claim for damages. *Zitske v. Goldberg*, 38 W 216.

A circuit judge can make orders to hold to bail. *In re Kindling*, 39 W 35.

Ejectment having been brought in a particular county for lands then situated therein the subsequent inclusion of the lands in another county by the legislature did not divest the jurisdiction of the circuit court. *Wisconsin C. R. Co. v. Cornell University*, 49 W 158, 5 NW 329.

If the court has no jurisdiction to render judgment such jurisdiction cannot be afterwards supplied, as by amendment of a return of service. *Hall v. Graham*, 49 W 553, 5 NW 943.

Reasonable presumptions are made in favor of the jurisdiction of superior courts and indulged until the record shows a lack of it. *Reinig v. Hecht*, 58 W 212, 16 NW 548.

Circuit courts have a general, original jurisdiction over matters arising in the administration of estates concurrent with the county courts. Yet that jurisdiction is practically suspended unless such facts appear as show that a complete and adequate remedy cannot be given by the county court. *Meyer v. Garthwaite*, 92 W 571, 66 NW 704.

A state court should not proceed in an action when it appears that a prior action between the same parties and involving the same issues is pending in a federal court in this state. *Ashland v. Wisconsin C. R. Co.* 121 W 646, 98 NW 532, 99 NW 431.

Where the summons in ejectment is served on the defendant, jurisdiction is obtained and absence of a party from the trial cannot affect such jurisdiction. *Comstock v. Boyle*, 134 W 613, 114 NW 1110.

The possibility that a question may arise in county court on distribution of the estate is no objection to the determination of the question when presented in the circuit court in an ac-

tion for construction of a will. *Stephenson v. Norris*, 128 W 242, 107 NW 343; *Pabst v. Goodrich*, 133 W 43, 113 NW 398; *Thorpe v. Seventh D. A. Church*, 182 W 107, 195 NW 331.

The circuit court will not take jurisdiction to grant relief from a judgment of a county court where the latter has power to grant the same relief. *Libby v. Central W. T. Co.* 182 W 599, 197 NW 206.

The limit of a judge's power to consult his fellow members of the bench is that he may not share responsibility with his fellow judges for the determination of any issue of law or fact, unless the law creating the judicial tribunal placed the responsibility for its decision on more than one judicial officer. *Rubin v. State*, 194 W 207, 216 NW 513.

A circuit court should not assume jurisdiction of a proceeding to construe a will, where a county court, before which an estate is being administered, can afford as adequate and efficient remedy. *First Wisconsin T. Co. v. Helmholtz*, 198 W 573, 225 NW 181.

It is error for the circuit court to take jurisdiction of the administration of estates if the county court can afford an equally adequate remedy. *Connell v. Connell*, 203 W 545, 234 NW 894.

The circuit court should not assume jurisdiction of an action for the probate of a lost codicil after the will had been admitted to probate in the county court. *Will of Jones*, 207 W 354, 241 NW 387.

The courts are always open to a discharged employe under civil service to inquire whether just cause in fact existed for his discharge, but the courts do not sit to control the judgment and discretion of executive and administrative officials, and the sole function of the courts is to determine whether such officials keep within their jurisdiction and act in accordance with established principles of law, and not to inquire into their secret motives. *State ex rel. Nelson v. Henry*, 221 W 127, 266 NW 227.

An order or judgment which is void may be expunged by a court at any time, and such right to expunge a void order or judgment is not limited by statutory requirements for reopening, appealing from, or modifying orders or judgments. *State ex rel. Wall v. Sovinski*, 234 W 336, 291 NW 344.

Where the county court has jurisdiction in probate matters, the circuit court is without jurisdiction. *Hicks v. Hardy*, 241 W 11, 4 NW (2d) 150.

The circuit court should not have assumed jurisdiction of a proceeding by the divorced wife of a beneficiary of a testamentary trust to charge the trust with the payment of alimony due under the divorce decree, and requiring a construction of the terms of the trust, since such proceeding could have been brought in the county court before which the trust was being administered, and that court, in the exercise of its general powers over testamentary trusts, could have applied the same rules of equity and afforded as adequate a remedy as the circuit court. *Razall v. Razall*, 243 W 15, 9 NW (2d) 72.

The circuit court for Dodge county was not without jurisdiction of an independent equitable action for relief from a judgment of di-

vorice entered in the circuit court for Dane county. The better rule is to commence an action for equitable relief from a judgment in the court where the original action was tried but, such action for equitable relief being an independent action, it may, like any other action, be tried in any county, subject to the defendants' right to have the case transferred. *Weber v. Weber*, 260 W 420, 51 NW (2d) 18.

Although the Wisconsin court, which granted a divorce, did not lack jurisdiction to hear a motion to modify the rights and obligations of the parties with respect to custody, alimony, or support money, it was error for the court to entertain such motion while an action thereon was pending in the California court of competent jurisdiction. *Brazy v. Brazy*, 5 W (2d) 352, 92 NW (2d) 738, 93 NW (2d) 856.

252.031 History: 1927 c. 258; Stats. 1927 s. 252.031; 1951 c. 35; 1959 c. 315; 1961 c. 261.

252.04 History: 1848 p. 21 s. 7; 1870 c. 116 s. 3; R. S. 1878 s. 2421; Stats. 1898 s. 2421; 1901 c. 146 s. 1; Supl. 1906 s. 2421; 1913 c. 592 s. 4; Stats. 1913 s. 113.04; Stats. 1923 s. 252.04; 1927 c. 473 s. 44.

Revisers' Note, 1898: Under the rule declared by the supreme court a writ of certiorari addressed to the county clerk is ineffectual to bring before the court the record of the proceedings of the county board relative to a change in town boundaries. The service must be made upon the board and the return made by it. The amendment is proposed to obviate the delay and expense attendant upon that mode of procedure.

"A writ is not void because it does not run in the name of the state (*Isley v. Harris*, 10 W 95); nor for want of a seal (*Corwith v. State Bank*, 18 W 560); nor, by parity of reason, for want of a date or for a mistaken date. The omission of either is an irregularity which may be cured by amendment." *Shakman v. Schwartz*, 89 W 72, 78, 61 NW 309, 310.

The writ of certiorari is properly addressed to a village clerk having the actual custody of the record of the proceedings of the village board acting with 2 town boards in an attempt to alter the boundaries of a joint district. State ex rel. *Hebert v. Carlson*, 150 W 584, 137 NW 746.

In the absence of a governing statute in cases involving municipal boards established pursuant to statute, which are of a permanent nature, as distinguished from boards of review which complete a particular assignment of work and then adjourn sine die, a writ of certiorari to review their action may run to either the board or its members. State ex rel. *Robst v. Board of Appeals*, 241 W 188, 5 NW (2d) 783.

A writ of certiorari to review the proceedings of a tribunal no longer in existence must go to the officer having possession of the record. Petition of *Bradt*, 260 W 1, 49 NW (2d) 903.

252.05 History: 1848 p. 21 s. 8; R. S. 1849 c. 55 s. 1 to 5; 1852 c. 297 s. 1, 2; R. S. 1858 c. 82 s. 1 to 5; R. S. 1878 s. 2422; Stats. 1898 s. 2422; 1913 c. 592 s. 5; Stats. 1913 s. 113.05; Stats. 1923 s. 252.05.

252.06 History: Stats. 1911 s. 2423, 2424; 1913 c. 2; 1913 c. 592 s. 6; 1913 c. 706; Stats. 1913 s. 113.06; 1915 c. 71, 120, 151, 364; 1915 c. 604 s. 6; 1917 c. 11, 25, 250, 316, 371; 1919 c. 88, 337; 1921 c. 38, 315, 361; Stats. 1923 s. 252.06; 1925 c. 45, 59, 157; 1927 c. 2, 12, 13, 14, 300; 1929 c. 31; 1931 c. 298; 1933 c. 79; 1935 c. 367; 1937 c. 7, 8; 1939 c. 10, 404; 1941 c. 90; 1943 c. 383; 1945 c. 45; 1947 c. 141; 1949 c. 60, 285, 460; 1951 c. 200, 255, 257, 402, 630, 726; 1953 c. 21, 113; 1955 c. 667; 1957 c. 41, 51, 109, 317, 452, 508, 509, 614; 1957 c. 672 s. 84, 85; 1959 c. 19 s. 50, 51; 1959 c. 84, 112, 259; 1961 c. 313, 629; 1963 c. 3, 4; Spl. S. 1963 c. 3; 1963 c. 478; Sup. Ct. Order, 25 W (2d) v; 1965 c. 206; 1967 c. 238; 1969 c. 124.

Failure to open circuit court on the day fixed for the beginning of a term does not result in a lapse or loss of the whole term, but the new term begins on said date by operation of law. 40 Atty. Gen. 447.

252.065 History: 1963 c. 195; Stats. 1963 s. 252.065; 1965 c. 206.

252.07 History: 1969 c. 253; Stats. 1969 s. 252.07.

252.071 History: 1925 c. 217; 1925 c. 454 s. 13; Stats. 1925 s. 252.071; 1947 c. 507; 1957 c. 252; 1963 c. 539; 1967 c. 213; 1969 c. 158 s. 106.

A county having elected to pay the circuit judges the additional salary prescribed in the option statute, it could not rescind its action, the statute containing no authorization to rescind. Petition of *Breidenbach*, 214 W 54, 252 NW 366.

This section (as it existed in 1962) did not authorize an increase in the amount a county paid a circuit judge during his term. State ex rel. *Sullivan v. Boos*, 23 W (2d) 98, 126 NW (2d) 579.

In a single county circuit, the county board may not elect to pay different salary supplements to the circuit judges concerned. 47 Atty. Gen. 116.

252.072 History: 1951 c. 319 s. 251; Stats. 1951 s. 252.072; 1967 c. 291 s. 14.

On extra compensation and salary change see notes to sec. 26, art. IV.

252.073 History: 1951 c. 319 s. 252; Stats. 1951 s. 252.073; 1953 c. 539; 1955 c. 321; 1961 c. 495, 642.

252.075 History: 1955 c. 494; 1955 c. 652 s. 55; Stats. 1955 s. 252.075; 1967 c. 291 s. 14.

252.076 History: Sup. Ct. Order, 11 W (2d) vii; Stats. 1961 s. 252.076.

252.08 History: 1913 c. 592; Stats. 1913 s. 113.08; 1915 c. 516; 1917 c. 14 s. 109; 1917 c. 299, 653; Stats. 1923 s. 252.08; 1933 c. 140 s. 2; 1961 c. 261, 495.

252.09 History: Stats. 1911 s. 2422a, 2424, 2426, 2427, 2431; 1913 c. 2; 1913 c. 592 s. 10; Stats. 1913 s. 113.09; Stats. 1923 s. 252.09; Sup. Ct. Order, 212 W vi; Sup. Ct. Order, 265 W vii; 1955 c. 577; 1955 c. 652 s. 54; Sup. Ct. Order, 25 W (2d) v.

For all general purposes the court is in session from commencement until close of a

term; and its authority continues over parties, jurors, etc., as well during a recess or adjournment for the night as during the day. A verdict taken in the courtroom, in the presence of the jury and bystanders, at 11 o'clock p. m., after the court had adjourned for the night, was not error. *Barrett v. State*, 1 W 175.

The circuit court for one county may continue its session therein after the day appointed for the holding of the circuit court of another county of the same circuit. *State v. Leahy*, 1 W 258.

The judge of the third circuit could appoint an extra jury term to be held in Winnebago county at the same time that a special term was held therein, under ch. 134, Laws 1885. *Schrier v. Milwaukee, L. S. & W. R. Co.* 65 W 457, 27 NW 167.

An order signed on the 16th day of October in the circuit court for Iron county was made at the June term of court, although a September term of court in Ashland county had intervened. The fact that the order was not filed until November 10th, after the beginning of a new term in Iron county, did not make it an order made after the term. *Frost v. Meyer*, 137 W 255, 118 NW 811.

252.10 History: 1848 p. 21 s. 5; R. S. 1849 c. 83 s. 4; R. S. 1858 c. 116 s. 3; 1860 c. 87 s. 1; 1867 c. 84 s. 1; 1878 c. 11, 35, 78, 230; R. S. 1878 s. 2424, 2426, 2427, 2431; 1879 c. 32, 43, 52, 206; 1881 c. 9, 35, 37, 63, 140, 159, 238, 292; 1882 c. 34, 55, 90, 125, 140, 157, 179, 180; 1883 c. 47, 61, 68, 87, 92, 101, 169, 172, 288; 1885 c. 3, 17, 134, 135, 141, 169; 1887 c. 6, 82, 224, 402, 468, 488, 511; 1889 c. 50, 51, 66, 111, 119, 120, 294, 297, 317, 350, 391, 503; Ann. Stats. 1889 s. 2422a, 2424, 2426, 2427, 2431; 1891 c. 2, 5, 133, 164, 326, 336, 355; 1893 c. 12, 67, 135, 227; 1895 c. 15, 37, 83, 108, 178, 224; 1897 c. 62, 181; Stats. 1898 s. 2422a, 2424, 2426, 2427, 2431; 1899 c. 10 s. 1; 1899 c. 62 s. 1; 1899 c. 351 s. 32; 1901 c. 2 s. 1 to 3; 1901 c. 6 s. 1, 2; 1901 c. 13 s. 1, 2; 1901 c. 27 s. 1; 1901 c. 103 s. 1; 1901 c. 110 s. 1; 1901 c. 133 s. 1; 1901 c. 299 s. 1; 1901 c. 395 s. 1; 1903 c. 221 s. 1; 1903 c. 224 s. 1; 1903 c. 226 s. 1; 1903 c. 255 s. 1; 1905 c. 6 s. 1, 6; 1905 c. 7 s. 1; 1905 c. 224 s. 1 to 3; 1905 c. 316 s. 1; Supl. 1906 s. 2424, 2431; 1907 c. 278; 1909 c. 5, 11, 25, 134, 301, 426; 1911 c. 34, 76, 146, 164, 401, 413, 447; 1913 c. 2; 1913 c. 592 s. 10; Stats. 1913 s. 113.10; 1921 c. 162; Stats. 1923 s. 252.10; Court Rule II; Sup. Ct. Order, 212 W vi; Sup. Ct. Order, 259 W v; 1953 c. 104; Sup. Ct. Order, 265 W v; 1957 c. 655; Sup. Ct. Order, 25 W (2d) vi; 1965 c. 643.

The circuit court has the power to determine the necessity of appointment of attendants, and the fact that the sheriff assigns deputies to attend the court does not deprive the court of this power. *Stevenson v. Milwaukee County*, 140 W 14, 121 NW 654.

252.11 History: R. S. 1878 s. 2428; Stats. 1898 s. 2428; 1913 c. 592 s. 11; Stats. 1913 s. 113.11; Stats. 1923 s. 252.11; Sup. Ct. Order, 204 W iv.

Revisers' Note, 1878: This section takes the place of numerous similar provisions relating to the various circuits.

Under an act providing that general terms in a county shall be special terms for other counties of the circuit, and another act pro-

viding that the court shall be open for the transaction of business from the commencement of one regular term to the commencement of another, findings may be made in vacation in a case heard at the term and where motion for judgment was made at the term. *Headly v. Miller*, 63 W 173, 23 NW 428.

Where a judgment is taken at a special term in an action pending in another county the want of authentication under sec. 2428, R. S. 1878, is not a jurisdictional defect, but at most a mere irregularity which will not be corrected on appeal unless an opportunity be first given to the circuit court to supply the alleged defect. *Morris v. Peck*, 73 W 482, 41 NW 623.

An action for specific performance of a contract and an injunction is triable at a special term. *Dells P. & P. Co. v. Willow River L. Co.* 170 W 19, 173 NW 317.

A notice of hearing of a motion for an extension of time for settling a bill of exceptions in circuit court was fatally defective for not designating the place of hearing where, although the venue of the action was in a certain county, such county was one of several in the circuit. *Morris v. P. & D. General Contractors, Inc.* 236 W 513, 295 NW 720.

252.12 History: R. S. 1878 s. 2430; Stats. 1898 s. 2430; 1913 c. 592 s. 13; Stats. 1913 s. 113.12; Stats. 1923 s. 252.12.

Revisers' Note, 1878: Taken from the various acts in respect to the different circuits, to enable the record to be sent to a special term in cases so triable.

The fee provided in 59.42 (9), Stats. 1953, is to be paid to the clerk of the circuit court who certifies and transmits the papers in each instance provided; first to the clerk where the action is pending, and second to the clerk where the special term was held. 42 Atty. Gen. 330.

252.14 History: R. S. 1849 c. 10 s. 75; 1850 c. 53 s. 1; 1856 c. 3 s. 1; R. S. 1858 c. 13 s. 94; 1861 c. 13; 1862 c. 353; 1868 c. 13; 1872 c. 26, 186; 1877 c. 146; R. S. 1878 s. 2433; 1881 c. 10, 151; 1883 c. 107; 1885 c. 110; 1887 c. 506; 1889 c. 121; Ann. Stats. 1889 s. 2433; 1891 c. 105, 119; 1895 c. 349; Stats. 1898 s. 2433; 1903 c. 398 s. 1; 1905 c. 253 s. 1; Supl. 1906 s. 2433; 1913 c. 592 s. 15; Stats. 1913 s. 113.14; 1917 c. 603; 1919 c. 362 s. 22; Stats. 1923 s. 252.14; 1925 c. 64; 1927 c. 286; 1945 c. 408; 1953 c. 100, 441, 610; 1955 c. 415, 420; 1959 c. 230; 1961 c. 495, 505; 1961 c. 643 s. 3 c; 1969 c. 123.

Appointment of a court commissioner is a ministerial or administrative act. Such an appointment by a judge when outside of the state became effective when filed. After the expiration of the term of the appointing judge a court commissioner holds over until his successor is appointed and qualified. *State ex rel. Hazelton v. Turner*, 168 W 170, 169 NW 304.

The offices of assistant district attorney and court commissioner are incompatible. 5 Atty. Gen. 520.

The offices of justice of the peace and court commissioner are incompatible. 5 Atty. Gen. 582.

252.15 History: 1877 c. 146 s. 1; R. S. 1878

s. 2434; 1885 c. 369 s. 1; Ann. Stats. 1889 s. 2434; Stats. 1898 s. 2434; 1913 c. 592 s. 16; Stats. 1913 s. 113.15; 1919 c. 299; 1923 c. 208; Stats. 1923 s. 252.15; 1929 c. 85; 1933 c. 463; 1943 c. 228; 1951 c. 251; 1957 c. 566; 1961 c. 495.

Revisers' Note, 1878: Last part of section 1, chapter 146, Laws 1877, with amendment to require record to be kept and filed.

Comment of Advisory Committee, 1951: 252.15 (1) to (10) is a restatement of old 252.15 (1) except that new (2) provides for court review of commissioners' ruling on adverse examinations. [Bill 92-S]

Before enactment of ch. 44, Laws 1860, a court commissioner could not entertain proceedings supplementary to execution further than to grant the preliminary order for examination before the judge. In re Remington, 7 W 643.

Under sec. 111, ch. 84, R. S. 1849, a court commissioner could not make an order fixing the amount of an appeal bond. Anonymous, 8 W 388.

See note to 252.16, citing In re Gill, 20 W 718.

A court commissioner had the same power (under ch. 358, Laws 1862) as a judge at chambers to allow amendment to a pleading. Moll v. Semler, 28 W 589.

A motion for retaxation of costs in circuit court is in the nature of an appeal from the taxing officer to the court and cannot be entertained by a court commissioner. Schauble v. Tietgen, 31 W 695.

A court commissioner had the same power (under ch. 358, Laws 1862) to extend the time within which bills of exceptions might be settled. Kelley v. Fond du Lac, 29 W 439; Pellage v. Pellage, 32 W 136.

Court commissioners have no power to issue attachments for contempt except where it is conferred by statute. The court cannot add to their powers. Where attachments may issue without special order of court the commissioner may fix the amount of bail. Haight v. Lucia, 36 W 355.

A court commissioner has no power to punish a witness for contempt for refusing to answer a proper question. State ex rel. Lanning v. Lonsdale, 48 W 348, 4 NW 390.

A court commissioner may compel the production of documents for use on an adverse examination held before him. McGeoch Bldg. Co. v. Dick & Reuteman Co. 241 W 267, 5 NW (2d) 804.

A court commissioner, in a habeas corpus proceeding instituted before him by a divorced parent to obtain the custody of his minor child, has jurisdiction to take testimony and make an order determining custody. State ex rel. Tuttle v. Hanson, 274 W 423, 80 NW (2d) 387.

See note to 256.01, citing State ex rel. Thompson v. Nash, 27 W (2d) 183, 133 NW (2d) 769.

Powers and duties of court commissioners. Nohl, 1 MLR 176.

252.152 History: 1933 c. 463; Stats. 1933 s. 252.15 (2), (3); 1951 c. 251 s. 2; Stats. 1951 s. 252.152.

Comment of Advisory Committee, 1951: (1) is from old 252.15 (2). (2) is from lines

21 to 26 of old 252.15 (1). (3) is from old 252.15 (3). The general provision on court commissioner's fees is in 252.17. (Bill 92-S)

252.155 History: 1931 c. 231; Stats. 1931 s. 252.155; 1957 c. 578.

See note to 256.14, citing State ex rel. Ampco Metal v. O'Neill, 273 W 530, 78 NW (2d) 921.

252.16 History: 1848 p. 23 s. 18; R. S. 1878 s. 2435; Stats. 1898 s. 2435; 1913 c. 592 s. 17; Stats. 1913 s. 113.16; Stats. 1923 s. 252.16.

The statute conferring upon county judges the powers of a circuit judge at chambers is valid. Except motions for a new trial on the merits, and orders to stay proceedings after the verdict, orders made by a county judge or court commissioner operate as orders made by the court. In re Gill, 20 W 718.

252.17 History: R. S. 1849 c. 131 s. 5; 1858 c. 88; R. S. 1858 c. 133 s. 11; R. S. 1878 s. 2436; 1889 c. 302; Ann. Stats. 1889 s. 2436, 2436a; Stats. 1898 s. 2436; 1913 c. 592 s. 18; Stats. 1913 s. 113.17; Stats. 1923 s. 252.17; 1947 c. 257; 1951 c. 716; 1953 c. 414; 1955 c. 424; 1961 c. 505; 1967 c. 112.

A county judge is not entitled to receive fees as a court commissioner. 23 Atty. Gen. 111.

252.175 History: 1961 c. 495; Stats. 1961 s. 252.175.

252.18 History: R. S. 1878 s. 2437; Stats. 1898 s. 2437; 1907 c. 485; 1913 c. 592 s. 19; Stats. 1913 s. 113.18; 1919 c. 17; 1919 c. 93 s. 28; Stats. 1923 s. 252.18; 1951 c. 319 s. 253; 1955 c. 317; 1961 c. 493, 495; 1967 c. 275; 1969 c. 154.

Revisers' Note, 1878: To give a general authority for the appointment of phonographic reporters, and render it unnecessary to pass repeated special acts. Milwaukee county is excepted, because governed by special act.

During all sessions of the court a court reporter should be where he can be called at any time to report the proceedings. Caryl v. Buchmann, 177 W 241, 187 NW 993.

See note to 102.03, on service incidental to employment, citing State v. Industrial Comm. 252 W 204, 31 NW (2d) 196.

A person appointed assistant court reporter, who takes the oath of office prior to entering upon his duties, but who does not file such oath until afterwards, is only an officer de facto. 3 Atty. Gen. 780.

The duty of counties to furnish all or part of the supplies and equipment used by the circuit court reporter can be grounded upon the inherent power of the circuit court to require counties to furnish the court with all supplies deemed by said court reasonably necessary for its functioning as a court. 31 Atty. Gen. 222.

Payment of circuit court reporter's travel expenses from his home in a county outside the circuit to the court house and return is proper. 41 Atty. Gen. 251.

252.19 History: R. S. 1878 s. 2438; 1889 c. 128; Ann. Stats. 1889 s. 2438; 1895 c. 36; Stats. 1898 s. 2438; 1907 c. 485; 1913 c. 592 s. 20; Stats. 1913 s. 113.19; 1915 c. 240; 1917 c. 14 s. 107; 1919 c. 628 s. 12; Stats. 1923 s. 252.19; 1925 c. 6

s. 4; 1925 c. 407; 1947 c. 228; 1951 c. 319 s. 254; 1955 c. 183; 1967 c. 26, 33, 226.

Revisers' Note, 1878: To provide compensation; and it is left discretionary, so that the circuit judge may fix it according to character and importance of the business to be done, and the ability of the county, etc.

CHAPTER 253.

County Courts.

Editor's Note: Ch. 253, Stats. 1957, except 253.29, was repealed by ch. 315, Laws 1959, effective January 1, 1962, and the repealed sections were replaced by new sections numbered 253.01, 253.02, 253.05-253.07, 253.10-253.14, 253.16, 253.18, 253.19, 253.30-253.33, and 253.35. Some of these sections were amended and various additional sections were incorporated in ch. 253 by subsequent legislation. For the most part, the cases and opinions cited in the annotations dealt with problems arising under ch. 253 prior to 1959.

On extra compensation and salary change see notes to sec. 26, art. IV; on jurisdiction of the supreme court see notes to sec. 3, art. VII, and notes to 251.08; on jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03; on judges of probate see note to sec. 14, art. VII; on general provisions concerning courts of record see notes to various sections of ch. 256; on bonds in county courts see notes to various sections of ch. 321; on appeals and miscellaneous provisions see notes to various sections of ch. 324; and on appeals, new trials and writs of error see notes to various sections of ch. 974.

253.01 History: 1959 c. 315; Stats. 1959 s. 253.01.

253.015 History: 1959 c. 259, 664; Stats. 1959 s. 253.015; 1961 c. 33 s. 46; 1961 c. 495; 1967 c. 276; 1969 c. 87, 255, 392.

Legislative Council Note, 1969: The specialized removal provision is deleted to make removal uniform throughout the state. This removal provision had never been used, because Menominee County has never had any municipal justices. (Bill 9-A)

253.02 History: 1959 c. 315; 1959 c. 621 s. 14; 1959 c. 633, 693; Stats. 1959 s. 253.02; 1961 c. 1, 491, 492, 495, 503, 527, 538, 614, 640, 642; 1961 c. 682 ss. 12, 13, 15; Spl. S. 1963 c. 1; 1965 c. 256; 1967 c. 26, 275; 1969 c. 17, 55; 1969 c. 158 s. 106.

253.05 History: 1959 c. 315; Stats. 1959 s. 253.05; 1963 c. 6.

253.055 History: 1955 c. 486 s. 13; Stats. 1955 s. 256.50; 1959 c. 675; 1963 c. 6; 1969 c. 55 s. 103; Stats. 1969 s. 253.055.

Editor's Note: A predecessor statute (252.02, Stats. 1925) was construed in State ex rel. Fugina v. Pierce, 191 W 1, 209 NW 693. See also 4 Atty. Gen. 558 and 26 Atty. Gen. 77.

253.06 History: 1959 c. 315; Stats. 1959 s. 253.06; 1961 c. 495, 614; 1961 c. 682 s. 19; 1965 c. 433; 1967 c. 226.

A county judge-elect may signify his refus-

al to qualify before the expiration of the time fixed by law for qualifying. State ex rel. Finch v. Washburn, 17 W 658.

A county judge vacates his office by accepting an election as justice of the peace. State v. Jones, 130 W 572, 110 NW 431.

Ch. 91, Laws 1905, did not extend an appointee's right to hold office. State ex rel. Dithmar v. Bunnell, 131 W 198, 110 NW 177.

253.07 History: 1959 c. 315; 1959 c. 659 s. 75; Stats. 1959 s. 253.07; 1961 c. 495, 541, 642; 1963 c. 225; 1965 c. 253, 495, 580; 1967 c. 43, 54; 1967 c. 291 s. 14; 1969 c. 55; 1969 c. 449 ss. 4, 8.

Editor's Note: For a history of the legislation concerning the fees of probate judges, see the dissenting opinion of Taylor, J. in State ex rel. Sanderson v. Mann, 76 W 469, 483, 45 NW 526, 46 NW 51.

See note to 59.15, on elective officials, citing Axelberg v. Bayfield County, 233 W 533, 290 NW 276.

For discussion of 253.07 (2) and 66.195, Stats. 1961, relative to increase or decrease of county judges' compensation during term of office see 51 Atty. Gen. 203.

253.08 History: 1961 c. 495, 642; Stats. 1961 s. 253.08; 1963 c. 343.

253.10 History: 1959 c. 315; Stats. 1959 s. 253.10; 1961 c. 487, 495; 1963 c. 6, 269; 1969 c. 283; 1969 c. 339 ss. 11, 27; 1969 c. 352; 1969 c. 411 s. 2.

Revisor's Note, 1963: Prior to the revision of Ch. 253 in 1959, 253.10 (4) to (8) were 253.035. Making them separate subsections in 253.10 did not make it clear that they were to be read as a unit. This change makes their application clear without changing the law. (Bill 44-S)

When facts showing jurisdiction of subject matter are alleged and adjudged the finding of such facts is conclusive in collateral proceedings. Wanzer v. Howland, 10 W 7.

County courts have power, in furtherance of justice, at any time to revoke their orders irregularly made or procured by fraud (In re Fisher, 15 W 511) but not after the statute of limitations has run in favor of a purchaser at an administrator's sale. Betts v. Shotton, 27 W 667.

The extent and limitation of the jurisdiction must often be determined by the principles and practice of the court of chancery. Brook v. Chappell, 34 W 405.

If the record shows want of jurisdiction the proceedings are void. Mohr v. Tulip, 40 W 66.

The county court may compel a purchaser at guardian's sale to complete the purchase by paying into court a part of her bid. Israel v. Silsbee, 57 W 222, 15 NW 144.

A testamentary trust should not be terminated without a hearing and some proceeding to which all persons interested in the trust fund are parties. Sumner v. Newton, 64 W 210, 25 NW 30.

A judgment of the Louisiana court appointing an administrator, based on a petition alleging that deceased died while a resident of that state, is not conclusive as to the domicile of the deceased and does not preclude a Wisconsin court from probating his will and