

No. 154, A.]

[Published April 18, 1929.]

CHAPTER 34.

AN ACT to repeal chapter 221, laws of 1921, and chapter 53, laws of 1927, and all acts amendatory thereof, relating to the first special municipal court for Rusk county, and to confer civil and criminal jurisdiction on the county court of Rusk county and to fix the salary of the judge and clerk thereof.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 221, laws of 1921, and chapter 53, laws of 1927, and all acts amendatory thereof are repealed; and the first special municipal court of Rusk county as now established is hereby abolished.

SECTION 2. There is hereby conferred on the county court of Rusk county jurisdiction of the following actions, matters, and proceedings, to wit: The jurisdiction, processes, and practice of said county court, aside from that now conferred by statute, shall be divided into two branches, the lower and upper branch.

SECTION 3. The lower branch of said county court shall have original jurisdiction to hear, try and determine all actions and special proceedings which may arise in said county and be of any of the following classes, to wit:

- (1) Crimes and misdemeanors excepting such as shall or may be punishable by commitment to the state prison;
- (2) Offenses arising under the charter and ordinances of any incorporated city or village in Rusk county;
- (3) Civil actions and special proceedings in law and equity, and all actions for the recovery of personal property, with damages for the unlawful taking or detention thereof, where the value of property in controversy, or the amount of money claimed or sought to be recovered, after deducting all payments and set-offs, shall not exceed five hundred dollars; and actions brought for any breach of recognizance given in said court.

SECTION 4. The processes, proceedings and practice of the courts of justices of the peace, as far as practicable, shall be the processes, proceedings and practice of the lower branch of the county court of Rusk county; and all provisions of law in force and effect relating to justices of the peace and to the trial of actions and proceedings therein shall apply to the lower branch of said court, and the judge thereof, in the exercise of the juris-

diction conferred by this act, except as herein otherwise provided.

SECTION 5. Appeals from judgments and orders of the lower branch of the county court in civil and criminal actions and proceedings shall be taken to either the upper branch of said county court or to the circuit court of Rusk county at the option of the party appealing, and all the laws relating to appeals from justice court shall apply thereto.

SECTION 6. A change of venue in any action or proceeding pending before any justice of the peace of Rusk county may be taken to the lower branch of the county court provided either party to the action shall, on or before the return day, by himself or attorney, in writing demand that such action be removed to the county court, in which case the justice shall, upon payment by the party making such demand of the costs and disbursements thus far incurred, forthwith transmit the papers to the county court, whereupon the action shall proceed in like manner as if originally commenced in the county court.

SECTION 7. Whenever, on or before the return day in any civil action and before the commencement of any examination in the lower branch of said court it shall appear by affidavit that from prejudice the said judge will not decide impartially in the matter, or that he is interested pecuniarily in the action, examination or other proceedings or is a material witness, or that he is within the forbidden degree of consanguinity, the said judge shall, if the amount involved in said action does not exceed two hundred dollars and is otherwise within the jurisdiction of a justice of the peace, call in a justice of the peace of Rusk county who shall hear, try and determine said action the same as though originally begun in his court; if the amount involved in said action or the value of property in controversy shall exceed two hundred dollars, said action shall be transferred to the circuit court of Rusk county or the county judge of some other county may be called in if both parties agree thereto.

SECTION 8. The court shall have the powers conferred by section 57.04 of the Wisconsin statutes of 1927 and amendments that may be made thereto, authorizing the suspension of judgments, the stay of execution and placing defendants on probation as in said section provided.

SECTION 9. A judgment by confession may be entered before the judge of the county court in the lower branch thereof in any

sum not exceeding five hundred dollars, without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, if a statement in writing be made, signed by the defendant and verified by his oath.

SECTION 10. In the lower branch of said county court there shall be kept a docket for criminal trials and proceedings and also a docket for civil actions. All docket entries shall be made and kept as far as practicable in the same manner as required in courts of justices of the peace. In all civil actions summons in blank may be signed by the judge and delivered to attorneys of record in the county, to be issued by them as occasion may require. The practice with reference to the return of summons and the docketing of cases in courts of justices of the peace shall be followed.

SECTION 11. In all civil actions and special proceedings in the lower branch of such county court attorneys' fees shall be taxed and allowed on all judgments of the sum of one hundred dollars or less in a sum equal to ten per cent of the judgment, and on all judgments over one hundred dollars ten per cent on the first one hundred dollars and five per cent on such sum as may be in excess thereof, but provided that the total amount that may be so taxed and allowed shall not in any case exceed twenty-five dollars.

SECTION 12. The upper branch of the said county court shall have the jurisdiction conferred to county courts by chapter 253 of the Wisconsin statutes, and in addition thereto shall have jurisdiction of the following actions, matters, and proceedings, to wit:

(1) The said county court shall have and exercise jurisdiction concurrent with and equal to the jurisdiction of the circuit court of said county in all civil actions, suits and proceedings, either at law or in equity, of every kind and nature and in all special proceedings of every kind and nature, except in actions on contract where the debt or balance due, or damages claimed in the complaint exceeds the sum of twenty-five thousand dollars.

(2) The said county court shall also have and exercise jurisdiction in all bastardy actions and in all criminal cases except murder, manslaughter and homicide.

(3) Subject to the exceptions aforesaid, the said county court shall be a court of general jurisdiction, with the same power and jurisdiction as have been heretofore, are now, or may here-

after be conferred by the constitution or statutes of this state upon the circuit courts of the state.

SECTION 13. All actions commenced before a justice of the peace in Rusk county, wherein the title to lands will come in question, and which were heretofore required by law to be sent and certified to the circuit court, may hereafter, at the election of the party making the plea or answer showing that the title to lands will come in question, be sent and certified to the county court.

SECTION 14. Appeals from judgments of justices of the peace in said county, in both civil and criminal actions, may be taken to either the circuit court or the county court of said county at the option of the party appealing in civil actions, and the defendant in criminal cases. When such appeals are taken to the county court, same shall be tried and determined therein in the same manner as is by law required in the circuit court of Rusk county, and in accordance with the rules and practice of said circuit court in force at the time of said trial, except as herein provided, and all laws providing for taking appeals in civil actions from justices of the peace or justice courts shall hereafter be construed to apply equally to such appeals taken to said county court.

SECTION 15. The said county court, within the limits aforesaid, shall be a court of record with a clerk and seal and shall have full power and authority to issue all writs and legal process, proper and necessary to carry into the effect the jurisdiction conferred by this act and the laws of this state, and to carry out such jurisdiction, said court and the judge thereof shall have and exercise all the powers now possessed, or which may hereafter be possessed by the circuit courts of this state and the judges thereof, and the same proceedings shall be had to procure such writs and process, and such writs and process shall be issued, executed and returned in the same manner and with like effect as in the circuit courts.

SECTION 16. All appeals, examinations, recognizances and commitments from or by any examining magistrate of said county in bastardy cases and in all criminal actions within the jurisdiction of this court, shall be certified and returned within the time prescribed by law to such county court, or to the circuit court if demanded by the appellant in civil actions or by the defendant in criminal actions, and the attendance of witnesses

upon the trial of any person so committed shall be procured in the same manner as provided by law in the circuit court, and the said court shall have the power to appoint an attorney to defend a person charged with an offense in the same manner and upon the same conditions as the circuit court may now or hereafter appoint an attorney to defend a person charged with an offense.

SECTION 17. Every issue of law in any civil action or proceeding in said court, and every issue of fact in any action heretofore cognizable in a court of equity, shall be tried by the court, but the court may order such issue of fact tried by a jury; every civil action properly triable by a jury, and not heretofore cognizable in a court of equity, shall on demand of either party, as hereinafter provided, be tried by a jury of twelve persons unless a less number be agreed upon by the parties, and if no jury be demanded by either party, shall be tried by the court. Every criminal action shall be tried in the same manner as in circuit court.

SECTION 18. All judgments, orders and decrees made and entered in and by said county court shall have the same force, effect and lien and be executed and carried into effect and enforced in the same manner as judgments, orders and decrees made and entered in the circuit court, and all remedies given and proceedings provided for the collection and enforcement of the judgments, orders and decrees of the circuit court, shall apply to and be exercised by and pertain to said county court. Actions for the foreclosure of liens, wherein the claim for lien has been filed in the office of the clerk of the circuit court, may be brought, heard and determined in and by said county court, in the same manner and with like effect as if brought in the circuit court.

SECTION 19. Any executor, administrator, guardian, trustee, or any person aggrieved by any order, judgment, decree, determination or denial of the upper branch of said county court, may at his option appeal therefrom to the circuit court for Rusk county, or have the same reviewed by writ of error or appeal from said county court to the supreme court. An appeal to the circuit court of Rusk county shall be taken by filing a notice thereof with said county court within sixty days from the date of the act appealed from, together with such undertaking as is required by section 324.02 of the Wisconsin statutes; and the procedure relating to counties having a population of fifteen thousand or less, as provided in section 324.03 of said statutes

shall apply hereto. On a review by writ of error or appeal from the said county court to the supreme court, the law and rules of practice relating to appeals from the county courts and from circuit courts, respectively, shall govern and control.

SECTION 20. There shall be held at the county seat of said county a general term of the upper branch of said county court on the first Tuesday of each of the following months, to wit: January, February, March, April, May, June, September, October, November and December in each year, and special terms of said county court may be called and held by order of the judge of said court at such time and place in said county as shall by such order be fixed.

SECTION 21. Within the jurisdiction of said court, judgment may be had and entered in vacation, if the defendant fail to answer the complaint, in the same manner and in like cases wherein judgment may now be had and entered in the circuit court in vacation, and the clerk of said court shall have the same powers and authority relative thereto as he has by law or otherwise in circuit court.

SECTION 22. If the judge be unable to attend and hold any general or special term of said court on the day appointed, he may by order adjourn said term to a day certain. Any circuit judge or judge of a county court having civil and criminal jurisdiction may upon the request of the judge of this court, hold said court and while so doing he shall have the power and authority herein conferred upon the county judge of Rusk county. If no such order or request be made, the court shall stand adjourned for the term and all cases continued to the next term of said court.

SECTION 23. The provisions of law applicable to change of venue in the circuit courts of this state shall be applicable to said county court. When the venue of any action shall be changed pursuant to section 261.04 of the statutes it shall be changed to the circuit court of the proper county; when it shall be changed pursuant to section 261.08 or 356.03 it shall be changed to the circuit court of Rusk county or the judge of said county court may call upon the circuit judge of the circuit in which Rusk county is located or upon any county judge having civil and criminal jurisdiction to attend, hold court and try said action and while so doing he shall have the powers of said county judge.

SECTION 24. Whenever it shall appear to the satisfaction of

the judge that a jury panel be drawn for any term of said court, he may by order direct the clerk, at a time to be named in such order, not less than six days before such term, to draw from the list of persons provided for jury service in the circuit court of said county, in the presence of the judge, twenty-four jurors for said term. If the name of any person known to the clerk or judge to be disqualified or no longer liable to jury duty in said county be drawn, such name shall be thrown out and the name of another juror to take his place be drawn and the list of jurors so selected shall forthwith be filed in the office of said clerk. No juror shall be summoned to attend upon any term of said court unless it shall appear to the satisfaction of the judge that a jury panel is necessary. All provisions of law and rules of practice relating to the selection, qualifications, duties and compensation of jurors in the circuit court shall be applicable to said county court, except as otherwise provided herein.

SECTION 25. After issue is joined in any civil action or proceeding, any party may upon five days' notice to the other party or parties, apply to the said court or the judge thereof to set down such case on the calendar of the court for trial on a particular day and the court or judge shall, if it be reasonably possible, fix a definite time for such trial, which shall not be less than five days from the time of hearing such application, unless for cause the judge shall otherwise order. At the time any action or proceeding is so set down for trial, if it be one triable by a jury, the court shall require the parties to determine and elect whether they wish a trial by jury, and if a jury is elected, of what number, and if a trial by jury is demanded by either party to the action and the said parties do not agree on a jury of less number, the court may at that time or at any time afterward direct that a jury be selected, as herein provided in such case, and issue a venire therefor returnable at the time fixed for the trial of the action; provided, that the issues of fact joined upon any complaint, indictment or information may be tried by the court without a jury or by a jury of less than twelve men whenever the accused in writing or by statement in open court entered in the minutes consents thereto. In any civil action or proceeding, properly triable by a jury, in which a jury has not been demanded or has been expressly waived by the parties, the court may upon the request of the parties or upon his own motion, by order entered in the minutes of the

case, call in two advisory triers, to be named in such order, who shall sit with the court upon the trial of the action or proceeding and confer and advise with the judge as to the determination of the issues of fact. Before entering upon their duties said advisory triers shall be sworn to well and truly perform their duties as such advisory triers, and they shall each be paid for their services by Rusk county, a sum not to exceed ten dollars per day upon the certificate of the county judge.

SECTION 26. In any civil or criminal action or proceeding in which a jury trial is demanded or ordered, the parties shall strike from the panel of jurors drawn for such term, the jury for such action. The district attorney or plaintiff shall strike first and each party shall strike in turn until the required number of jurors is left. When either party declines to strike in his turn, the strike shall be made by the clerk. When the persons so elected for jury service at any term have been determined, a venire therefor returnable at such time as the judge may direct shall be issued by the clerk to the sheriff of the county. If any of the jurors named in such venire shall not be found or shall fail to appear or be excused by the court, or being in attendance for the trial of any particular action or proceeding shall upon examination be found to be disqualified to serve on said jury, or shall be challenged peremptorily by either party, the court may direct the sheriff to summon a sufficient number of talesmen from among the bystanders or from the body of the county to supply the deficiency, provided that not more than four such talesmen shall be selected from the residents of any one town, city or village, except by consent of the parties. Upon examination upon voir dire under this section, each party shall be entitled to two peremptory challenges.

SECTION 27. If a jury be required to make an assessment of damages in any case, the same shall be selected from the panel of jurors selected for the term, or the court may direct the same to be had and taken by any jury summoned in any other case or may direct the clerk to summon a special jury for that purpose to be composed of persons qualified to serve as jurors in said court, and unless objections are made, such assessment of damages may be made by the court or judge thereof, without the intervention of a jury.

SECTION 28. All costs, fees, and disbursements shall be taxed and allowed the prevailing party in the same manner and to like

amount as they are taxed and allowed in the circuit court, except as herein provided.

SECTION 29. The judge of the county court shall be disqualified to try and determine any case in which he shall have acted as counsel for either party, and he shall transmit all such cases to the circuit court of said county; and the judge of said county court may on his own motion transmit to the circuit court any other action or proceeding before him, if in his discretion he deem it expedient; and the circuit court shall thereupon proceed to try and determine the same in the same manner as if said action or proceeding had originated in the circuit court. The circuit judge may transmit to said county court any action or proceeding pending in said circuit court which might originally have been commenced in said county court, if in his discretion he deem it expedient, and said county court shall thereupon proceed to try and determine the same in the same manner as if said action or proceeding had originated in said county court.

SECTION 30. The judge of said county court, while holding such office, shall be in no manner engaged nor act as attorney or counsel in any action, cause or proceeding in or which might be brought in any of the courts of this state, nor give advice or opinion therein; and the judge of said court shall not give advice to parties litigant in any action or proceeding pending before such judge, nor in any matter which might be brought before him for decision, nor draft or prepare any papers or other proceedings relating to any such matter or action, except when expressly authorized by law, upon penalty for any violation hereof of removal from office. The judge of the county court shall not have a partner practicing in said court.

SECTION 31. The county judge of Rusk county, until the end of the current term and until otherwise fixed by the county board, for performing the duties of his office and the duties of the office of judge of the juvenile court for said county, when performed by him, shall receive a salary of four thousand five hundred dollars per annum, to be paid out of the county treasury in equal monthly installments at the end of each month.

SECTION 32. The clerk of the circuit court of said county shall ex officio be the clerk of said county court, and the books and papers belonging to said county court shall be kept in the office of the clerk of said circuit court unless otherwise ordered by the county judge. The county judge shall appoint some person to

act as deputy clerk and official reporter of said court, as well as registrar in probate for said county. Said deputy clerk shall have the actual care and custody of all books and papers belonging to said county court, and shall attend all sessions of said court and perform all the duties of clerk of the court so far as it shall be requisite and necessary to discharge the duties of clerk thereof. Such deputy clerk shall take and subscribe the oath of office provided in the constitution; shall be furnished by the county with all necessary books and stationery and shall report the proceedings of all trials had in said court and perform such other duties as said judge shall require. The salary of said deputy clerk for acting as clerk, reporter, and registrar in probate, shall be fixed by the county judge at a sum not to exceed one hundred dollars per month, payable monthly out of the treasury of Rusk county, and until otherwise ordered by the county board of said county. All fees and charges collected by said deputy clerk for filing papers, certifying and making transcripts of evidence shall be paid into the county treasury of Rusk county.

SECTION 33. All orders, judgments and decrees made and entered in said court shall be recorded, and judgments and decrees docketed by the clerk of the circuit court in the same manner and in the same books that orders, judgments and decrees of the circuit court of said county are recorded and docketed, and with like effect. Notations shall be added in such dockets and records showing that such orders, judgments or decrees were made in said county court. The said clerk of the circuit court shall be entitled to the same fees for such services as though the case was originally brought and disposed of in the circuit court. In each civil action commenced in or appealed to the upper branch of said county court, there shall be paid a county tax of one dollar and an advance clerk's fee of two dollars, which county tax and clerk's fee shall be paid to the county treasurer of Rusk county, and by him put in the fund for payment of salaries of the judge and deputy clerk of said county court.

SECTION 34. The sheriff of said county, in person or by his undersheriff or one of his deputies, shall attend such court when actually in session for the transaction of court business, other than probate business, and the court shall designate the number of officers that shall be present when such court is in actual

session as aforesaid and such officers shall be entitled to receive the same compensation and such compensation shall be payable in like manner as is or may be provided by law for like service in the circuit court.

SECTION 35. The fee of witnesses, jurors and officers shall be the same as are allowed by law to witnesses, jurors and officers in the circuit court of Rusk county.

SECTION 36. Court commissioners for the circuit court of Rusk county shall have the same powers and be subject to the same duties in respect to actions and proceedings in said county court as in actions and proceedings in said circuit court.

SECTION 37. The seal of the county court of Rusk county shall continue to be used as the seal of said court.

SECTION 38. The county of Rusk shall provide all books, blanks and stationery for keeping the records and proceedings of said county court made necessary by this act. The county court of said county shall be held in the county court room or in the circuit court room when the circuit court is not in session, at the county seat of said county except as herein provided, and all books, records and proceedings pertaining to said county court shall be kept in the office of the clerk of said county court or in the office of the county judge for Rusk county.

SECTION 39. The judge of said county court shall, in addition to all other requirements, file with the county clerk of Rusk county quarterly, a statement containing a full and complete list of all court costs and clerk fees collected by said judge or clerk in all civil and criminal actions commenced in either branch of said county court and the said judge shall, at the same time, pay into the treasury of Rusk county all fines, costs and clerk's fees so collected, such costs and clerk's fees to be kept by the treasurer of Rusk county in a separate fund for the payment of salaries of the judge and deputy clerk of said county court.

SECTION 40. In case of the absence or temporary disability of the said county judge he may by order in writing to be filed in said court call in a county judge of some other county having civil and criminal jurisdiction or the circuit judge of Rusk county to discharge the duties of such judge during such absence, sickness or disability.

SECTION 41. The general provisions of the statutes of Wisconsin, and all the general laws which may at any time be in force relative to circuit courts and proceedings therein, in civil

and criminal cases, shall also apply to said county court, unless inapplicable, and except as otherwise provided in this act; and the rules of practice prescribed by the justices of the supreme court for circuit courts shall, unless inapplicable, be in force for said county court, and the judge of said county court shall have the power to punish for contempt in the same manner that the judges of circuit courts are or may be authorized by law to punish for contempt, and the said county court shall have the power to make and enforce such other rules of practice as may be necessary.

SECTION 42. All actions pending in said municipal court at the time this act takes effect shall be transferred to the county court of Rusk county. All public records of every nature of said municipal court shall be transferred to the county judge of Rusk county, and shall thereafter be considered and treated as the records of said county court in the same manner as if such records had originally been made in said county court, and with the same authority in regard thereto as though said records were still in the official custody of the judge of said first special municipal court.

SECTION 43. This act shall take effect on and after June 3, 1929, after its passage and publication.

Approved April 16, 1929.

No. 39, A.]

[Published April 22, 1929.

CHAPTER 35.

AN ACT to amend section 59.82 of the statutes, relating to the examination of magistrates' dockets.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section 59.82 of the statutes is amended to read:

59.82 * * * *The auditing committee of the county board in counties which have such a committee and in other counties the county auditor, or the county clerk if there is no county auditor, shall personally * * * before the * * * meeting of the county board in each year, inspect the docket of every justice of the peace, police justice, municipal judge or other magistrate in the county who is authorized to receive fines under section 360.34, * * * and ascertain therefrom the amount of such*