

No. 379, S.]

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CHAPTER 212.

AN ACT to amend 301.245 and to create 59.999 of the statutes, relating to a uniform "Small Claims Court", prescribing the powers, duties and jurisdiction thereof and the procedure and practice therein and conferring upon county courts in counties having a population of less than 25,000 all the powers, duties and jurisdiction of the small claims court.

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

SECTION 1. 59.999 of the statutes is created to read:
59.999 SMALL CLAIMS COURT. (1) OPTION OF COUNTY BOARD; JURISDICTION. (a) There is hereby created and established in and for each county having a population of less than 500,000 a municipal court designated "Small Claims Court for

..... County" with jurisdiction, powers, functions, duties,
(name of county)
procedure and practice as prescribed in this section. Such court shall become operative and function in any county when and if the county board thereof by a majority vote of all its members elect shall by resolution determine need therefor and make provision for its operation and maintenance. Such court shall be maintained at the expense of the county. All receipts of the court shall be paid to the county treasurer as hereinafter provided.

(b) In addition to all other jurisdiction, powers, functions and duties conferred on such courts and the judges thereof there is hereby conferred upon each county court in counties having a population of less than 25,000, and the judge thereof, all the powers, functions and duties of the small claims court in and for such county as prescribed in this section. The rules of practice and procedure in the small claims court of any such county, as prescribed in this section, shall apply to the county court of such county and the judge thereof in and about exercising the jurisdiction, powers, functions and duties so conferred. In applying this section to any such county court, or the judge thereof, exercising the jurisdiction, powers, functions and duties so conferred the words "small claims court" wherever they appear in this section, unless the context otherwise requires, shall be deemed to mean "county court". The jurisdiction, powers, functions and duties hereby conferred shall be exercised by the county court of any such county and the judge thereof when and if the county board of such county by a majority vote of all of its members elect shall by resolution determine need and make provision therefor.

(2) COURT OF RECORD; SEAL. Such small claims court shall be a court of record and shall have an official seal, which shall have such design as the first judge shall prescribe, and on which shall be engraved the words "Small Claims Court for County, State of Wisconsin".

(3) SEAT OF COURT; PROCESS AND JURISDICTION COUNTY-WIDE. The principal seat of the small claims court shall be the county seat and the process and jurisdiction of the court shall extend throughout the county. The board of supervisors shall provide in one central location suitable accommodations, equipment, library, supplies, records, stationery, blanks and such other supplies as may be necessary in the due operation of said court. The court may in its discretion hold court in any other city or village in the county, for the convenience of parties and their witnesses, when proper facilities have been provided by such city or village.

(4) POWERS, DUTIES, JURISDICTION. The small claims court and the judge thereof are vested with all powers and charged with all duties of a court of record and all laws of a general nature shall apply to the small claims court so far as applicable. The actions in respect to which such powers shall be exercised and such duties shall be performed are as hereinafter set forth. The following actions may be brought in the small claims court and said court and the judge thereof are conferred jurisdiction over such actions:

- (a) Actions arising out of contract wherein the amount claimed does not exceed \$500;
- (b) Actions on installments as they become due on any written instrument when the amount claimed does not exceed \$500;
- (c) Actions on any surety bond or undertaking taken by a court, judge or justice provided the penalty or amount claimed does not exceed \$500;
- (d) Actions on any official bond when the damages claimed do not exceed \$500;
- (e) Actions for injuries to persons or to property wherein the amount of damages for which recovery is demanded does not exceed \$500;
- (f) Actions to recover the possession of personal property, with damages for the unlawful taking or detention thereof, wherein the value of the property claimed does not exceed \$500;
- (g) Actions under chapter 291, and construction of notices related thereto;
- (h) Actions to enforce a lien or collect a tax upon personal property where the amount claimed does not exceed \$500;
- (i) Actions to recover judgments by confession as provided by section 270.69 when the sum claimed does not exceed \$500;
- (j) Actions of attachment and garnishment under chapter 304, Wisconsin statutes, where the amount claimed does not exceed \$500;

1. The garnishee summons shall be issued and signed by the judge or clerk of the small claims court.

2. The garnishee or his authorized agent may answer by letter directed to the judge of said court, which letter shall have the same force and effect as an answer made through personal appearance on the return day. Said letter shall not be deemed a timely answer unless received by the judge prior to or at the time when the garnishee is summoned to appear. In the event issue be taken upon an answer made by letter, all further proceed-

ings shall be the same as in garnishment actions under chapter 304 and the prevailing party shall be entitled to receive costs. Nothing herein shall be construed as prohibiting a garnishee from answering in all garnishment actions through personal appearance.

3. A garnishee, other than the state of Wisconsin, shall be entitled to a fee of 50 cents and shall not be required to answer unless such fee is first tendered in cash or by check. In the event the garnishee summons is served by mail, such fee shall be mailed with the summons. Such garnishee fee shall be advanced by the plaintiff to the clerk of said court before mailing. In the event that the garnishee defendant does not present the check tendered for his fee within 90 days from the date thereof the check shall be void and the amount thereof shall be paid over to the county treasurer as part of the receipts of the court.

4. Section 267.22 (5) and (6) shall apply to garnishment of salaries and wages of public officers and employees.

5. Garnishment or attachment proceedings on judgments of the local county circuit court may be commenced in the small claims court provided a copy of the summons is filed with the clerk of the court wherein such judgment is docketed and the amount sought to be recovered is within the jurisdiction of the small claims court. A report of the outcome of the proceedings in the small claims court shall be filed with the clerk with whom the summons was filed.

(k) Actions of replevin to recover the possession of personal property not exceeding in value the sum of \$500. So far as applicable and not inconsistent with this act chapter 305 shall apply to such actions of replevin.

(l) Actions on judgments rendered by a justice of the peace, subject, however, to the provisions of section 302.33.

(m) All criminal jurisdiction now exercised by justices of the peace.

(5) JURISDICTION OVER MATTERS OF JUSTICES WHOSE OFFICE BECOMES VACANT. Notwithstanding sections 300.22, 300.23 and 300.24, whenever the office of a justice of the peace for the county becomes vacant the dockets, books and papers belonging to his office, in reference to all civil actions and proceedings over which the said small claims court has jurisdiction, may be delivered to the clerk of circuit court for the county by the person in possession thereof; and when so delivered the small claims court shall have jurisdiction of all such civil actions and proceedings. In the exercise of such jurisdiction the said small claims court may try any such actions or proceedings pending at the time such vacancy occurred, enter judgment therein and issue execution thereon with the same force and effect as though such action or proceeding had been commenced before it. With like force and effect it may issue executions and transcripts upon any judgment in any such action or proceeding appearing upon such dockets, books and papers, and may issue, process, hold hearings and make determinations in proceedings supplemental to such executions.

(6) TRANSCRIPTS FROM JUSTICE'S COURT. A transcript of a justice court judgment in any action or proceeding over which the small claims court for the county has jurisdiction may be filed in the said small claims court and thereafter further proceedings may be taken on such judgment as if the judgment were originally that of the small claims court.

(7) PRACTICE AND PROCEDURE. (a) *Statutes and rules governing.* 1. The practice and procedure of said small claims court shall be summary in its nature. Pleadings may be oral or written and need not be verified, except when otherwise expressly provided by applicable statute. The court may by order require written or verified pleadings in any case in its discretion.

2. Chapters 260, 263 and 269 except sections 263.01, 263.24, 263.37, 263.38, 263.39, 269.12, 269.19, 269.29, 269.34 (4), 269.36 and 269.47, shall apply to actions and proceedings in the small claims court.

3. The judge of said small claims court shall have the power to make such rules governing the practice and procedure in said court, not inconsistent with this act, as he may deem advisable to facilitate the disposition of matters coming before the court. Every such rule shall be in writing and shall not become effective until filed with the clerk of said court for a period of at least 10 days.

(b) *Amendments in actions of unlawful detainer.* The complaint in an action under chapter 291 may be amended on or before trial to set forth allegations of facts existing at the time of the filing of the complaint. Such amendments shall be permitted in the discretion of the court and on such terms as the court shall direct.

(c) *Supplementary proceedings; court commissioners.* The provisions of chapter 273 shall apply to the small claims court and the county court commissioners appointed under and having the powers and duties set forth in sections 252.14 through 252.17 shall exercise all such powers and shall perform all such duties in respect to all matters pending in the small claims court.

(8) **FORMS.** The form of summons, warrants, writs, process, judgments, executions, or other documents or papers, which shall be used in said small claims court, shall follow those which are now or may hereafter be prescribed by law for use in civil actions and proceedings before justices of the peace, with such changes and additions as the judge of said court, in his discretion, may deem necessary for use in said small claims court.

(9) **ISSUANCE OF SUMMONS.** The summons shall be signed by the judge or by the clerk of said court. The judge of said court may issue any summons in blank and deliver the same to any attorney duly authorized to practice law in Wisconsin, to be issued by such attorney as occasion may require. No fees shall be charged therefor, excepting that a reasonable charge shall be made by the clerk of said court, necessary to defray the actual costs of printing and distributing said summons.

(10) **RETURN DATE.** Every summons or other order or paper shall be made returnable not less than 6 nor more than 15 days from the date when it is served upon the defendant, if service is made other than by mail. If service is made by mail, the summons or other order or paper shall be made returnable not less than 8 nor more than 17 days from the date of mailing. If a summons is issued by an attorney, it may, with the consent of the clerk of the court, be made returnable on any day of the week excepting Sunday and Saturday at any time of the day between the hours of 9 and 11:45 a. m., and 1:30 and 3:30 p. m. If service is made by mailing, the clerk shall make the summons or other order or paper returnable at intervals throughout the hours of the day on the days specified, to the end that cases may be heard with as little delay as possible.

(11) **SERVICE.** Any summons or other legal process or paper shall be served as follows:

(a) By service on individuals or corporations, in the manner provided by sections 262.08 and 262.09. Every person serving any summons or other process of said court, shall forthwith make his return thereon in writing, stating the manner and time of service, and sign his name and add, if an officer, his official title, and return the same to the clerk of said court.

(b) By mailing in the manner following: Service by mail upon defendants residing in the county may be made by leaving the original and necessary copies of the summons with the clerk of said court, together with the sum of 25 cents to cover the expense of mailing. The clerk shall mail the copy to the defendant at his last address as known to the plaintiff or clerk. Service of said summons shall be deemed completed when it is mailed. The clerk shall enter upon the docket the date when the summons is mailed and the name of the person to whom mailed. All mailing of summons shall be done in envelopes setting forth the name of the court and a request to return to said court. If registered mail is required an additional fee may be charged to cover the expense of such mailing.

(12) **DOCKETING OF ACTIONS.** The clerk shall docket every summons or other paper at the time the summons or paper is left with the clerk for service by mail. The clerk shall docket every summons or paper served otherwise, after it has been returned to him by the person serving it. Such docket entry shall, in the event said summons was issued in blank, have the same force and effect as if made at the time said summons was issued.

(13) **TRIAL BY COURT.** The parties shall, in all cases, join an issue of law or of fact, at the time when said summons is returnable. The court, at that time may order the case tried immediately or may, in its discretion, adjourn the trial until such time and place as he shall see fit. No adjournment shall be granted until issue shall have been joined as herein provided, unless the court directs otherwise. Failure to adjourn a case to a day or a place certain shall not deprive or oust the court of jurisdiction, or render any judgment void. If on the return date of said summons the plaintiff shall fail to appear the court may summarily dismiss the action on motion of the defendant or its own motion. If on such return date the defendant shall fail to appear the court may enter a default judgment upon due proof of facts which show plaintiff entitled thereto. The rule of pleadings and evidence outlined in section 301.35 (13) shall be followed.

(14) **TRIAL BY JURY.** Trial by jury may be had in such small claims court in the same manner as in courts of justices of the peace, as now provided under chapter 302 or as hereafter provided by law if demand and payment of fees therefor be made on or prior to the return date. The court may, however, upon good cause shown, permit such demand and payment of fees to be made any time before trial. Every juror summoned shall receive the fees specified in section 255.31, except that if he receives fees as a circuit court juror for the day, he shall not be entitled to further juror fees. In actions wherein the amount sought to be recovered exceeds \$200 the judge may on his own motion require the issues of fact to be tried to a jury. In such event the county shall pay the jury fees upon certification by the judge of such expense to the county treasurer. In the event a jury shall be in attendance in the circuit court of the county the officer shall with the con-

sent of the circuit judge presiding over said jury panel select said jury from said circuit court panel. In the event a jury shall not be in attendance in said circuit court, the officer shall select said jury from the current circuit court jury panel, unless the judge of the small claims court shall otherwise order. In all actions tried by jury the provisions of sections 270.25 to 270.28 shall apply. The judge shall charge the jury and all such and subsequent instructions shall, unless a written charge be waived, be reduced to writing before being delivered. Each instruction asked to be given the jury shall be given without change or refused in full. Requests for instructions to the jury must be submitted in writing before the argument to the jury is begun, unless in the opinion of the judge, special circumstances excuse failure to so submit such requests.

(15) FEES. (a) *Docketing fee.* At the time of issuance of every summons or other process in a proceeding not commenced by a summons the plaintiff shall pay, to the clerk of said court, a docket fee of 50 cents, plus a state tax of 10 cents. When a summons is issued in blank to an attorney the docketing fee shall be paid before the summons may be served.

(b) *Fees on entering money judgments.* Before the entry of any money judgment or dismissal of any action in which a money judgment was sought otherwise than by agreement, the prevailing party shall pay, to the clerk, an additional fee as follows:

<i>Amount involved in action including interest</i>	<i>Fee</i>
\$ 0 to \$ 50.....	\$.50
50 to 100.....	.75
100 to 150.....	1.00
150 to 200.....	1.25
200 to 300.....	2.00
300 to 400.....	2.50
400 and over.....	3.00

(c) *Fees on entering judgments other than money judgments.* Before the entry of any judgment other than a money judgment, or the dismissal of any action other than by agreement, the prevailing party shall pay to the clerk such fees as are comparable to fees for money judgments when the value of the subject of the action is considered or 50 cents if no other fee is determinable.

(d) *Fees transmitted to county treasurer.* All fees received by the clerk, other than garnishee tender fees, shall be paid monthly to the treasurer of the county, and shall be used to defray the expenses of said court. The amounts received by the clerk as state tax shall be paid, by the clerk, to the county treasurer to create a fund to be applied to the payment of the salary of said judge.

(e) *Limitation of costs; fees.* Except as may be otherwise specifically provided in this section, no party shall be taxed or required to pay any other or further costs or fees in any civil action or proceeding in said court and no other fee shall be required for filing any document in proceedings under subsection (4) (j) 5 of this section.

(16) COSTS. In every action or proceeding, after the fee for the judgment has been paid the judge shall without any other or further notice to the parties tax and insert in the judgment as costs in favor of the party recovering judgment the following:

(a) Amounts paid by such party as the mailing fee, docket fee, garnishee fee, state tax and fee for entering judgment.

(b) Lawful fees or charges of the sheriff, constable, or other person for serving the summons or any other document.

(c) Amounts paid for jury fees and such motion fees and reporter fees as the court may allow.

(d) Amounts necessarily paid out for witness fees, including travel. The fees for witnesses and their travel shall be those specified in section 307.02 (1).

(e) Attorney's fees except when the amount thereof is otherwise specially provided for:

1. On a judgment for \$50 or less, 10 per cent of the judgment; on a judgment for more than \$50 and less than \$100, \$5; on a judgment for \$100 and less than \$200, \$10; on a judgment for \$200 or more such amount as shall be fixed by the court but not more than \$25; provided that such fees, in the discretion of the court, may be disallowed in whole or in part.

2. In an action of replevin and attachment the value of the property recovered shall govern the amount of the attorney's fees taxable. In an action of unlawful detainer the attorney's fees taxable shall be fixed by the court but shall not exceed \$25.

3. If judgment be for the defendant, the amount claimed in the complaint, the value of the property sought to be recovered or the amount recovered on the defendant's counter claim, in the court's discretion, shall govern the amount of the attorney's fees that the defendant shall recover.

4. No attorney's fees shall be taxed in behalf of any party unless he appear by an attorney.

5. No attorney's fees shall be taxed in favor of the plaintiff unless the defendant interposes an answer or demurrer.

(f) Fees for issuing executions, transcripts of judgments and docketing transcripts of judgments shall be 25 cents.

(17) TRANSCRIPTS OF JUDGMENTS TO CIRCUIT COURT; JUDGMENT LIEN. The clerk of the circuit court for the county shall upon request and payment of the sum of 25 cents forthwith file a transcript of any judgment rendered in said small claims court and docket the same in the same manner as judgments are filed and docketed under the provisions of section 270.74. Upon filing and docketing said transcript of judgment, said judgment shall be deemed a judgment of the circuit court and thereafter shall be enforced as such and shall be a lien upon real estate in the same manner and with like effect as judgments of said circuit court. Until such judgment is so filed the judgment shall be the same as a judgment of any other court of record except that it shall not be a lien on real estate. A transcript of any judgment of the small claims court may be filed with the clerk of any circuit court in the state of Wisconsin in the same manner and with the same effect as provided above for transcribing such judgment to the circuit court.

(18) FAILURE OF ACTUAL NOTICE OF SUIT BY MAIL. (a) In any action where service of summons or other process or paper is made by mailing, the defendant, at any time within 10 days of receiving actual knowledge of the pendency of the suit or of the entry of judgment therein against him (if judgment has been entered), may petition the court, in writing, for opportunity to be heard upon the merits. If the court finds there is reasonable ground to believe that the defendant did not receive the summons or other process or paper mailed to him or did not receive the same in time to give him reasonable opportunity to appear on the return date and did not have knowledge of the adjourned date sufficiently in advance thereof to give him reasonable opportunity to then appear, it shall set the matter for hearing, or if judgment has been entered shall stay all proceedings on the judgment and shall set the matter for hearing, at such time as will give the parties reasonable opportunity to prepare therefor. At the time of such hearing the question of the defendant's actual receipt of the summons or other process or paper by mail or the receipt by mail in time to give reasonable opportunity to appear, shall first be heard and determined by the court. If the court finds that the defendant did not receive the summons or other process or paper by mail and within time to give him reasonable opportunity to appear, the court shall proceed to try the matter upon the merits, or if judgment has been entered, shall vacate the judgment and proceed to try the matter upon the merits. If the court upon such hearing finds that the defendant did receive the summons or other process or paper by mail in time to give him reasonable opportunity to appear and be heard, the court shall, if judgment has been entered, revoke its order staying proceedings thereon, and if a judgment has not been entered, the court in its discretion, may give the defendant opportunity to be heard upon the merits.

(b) The provisions of this subsection shall not apply where service is made by mail and where the defendant actually appeared and submitted to the jurisdiction of the court without filing application as provided in paragraph (a) of this subsection.

(c) Whenever a judgment entered by said small claims court is transcribed to and filed and docketed with the clerk of the circuit court, the petition prescribed in paragraph (a) of this subsection shall be made to such circuit court. Said circuit court shall in such case either determine the issue raised by such petition or remand the same to the small claims court for determination and the small claims court shall hear and try the cause if it shall deem a trial necessary. If the cause is so remanded the small claims court shall certify to the clerk of the circuit court the disposition thereof, and the said clerk shall make entry upon his docket accordingly.

(19) JUDGMENT. Judgments shall be dated as of the day of the rendering of the same in open court, or the date of the notification by the court of the rendering of the decision, provided the fee is paid, otherwise the date of the judgment shall be the day when the fee for entering it is paid. When the decision is rendered in open court or the court notifies the parties or their attorneys of its decision no further notice of entry of judgment need be given by the parties provided the fee for entering the judgment is paid on the same day.

(20) JUDGMENT ON FAILURE TO ANSWER. Judgment may be had if the defendant fails to appear and answer the summons or appear at the time set for trial as follows: In any action arising on contract to the recovery of money only, the plaintiff may file with the judge or clerk a verified complaint, an affidavit of the facts, or after being duly sworn by said clerk or judge may testify to the facts pertaining to said action. If such proof be taken by the clerk he shall thereupon transmit said verified complaint,

affidavit of the facts, or the record of his notes of such sworn testimony, together with all papers in the action to the judge of said court, who may thereupon enter judgment for the plaintiff if the record and facts so presented entitle the plaintiff to a judgment.

(21) APPEALS. (a) Except as herein provided, an appeal may be taken to the circuit court by any party to an action or proceeding in said small claims court from any final judgment of said small claims court or from any order of said small claims court from which an appeal to the supreme court might be taken if such order were made by a circuit court. Such appeals shall be taken within 20 days after entry of judgment or order appealed from except in default cases where the time shall be 10 days. The returns and amended returns upon such appeals shall be made by the clerk of said small claims court in the manner provided in chapter 306 relating to appeals from justices' courts; provided, that upon an appeal from any order of said small claims court, such clerk shall include in the return so much of the record and testimony in such action as shall be necessary to determine the questions raised by such appeal. Upon written request of either party the clerk shall include the entire record in such return.

(b) Upon such appeal the circuit court shall either affirm or reverse any judgment so appealed from except that said circuit court may modify, and affirm as modified, any such judgment in all cases where the same might have been so modified, and affirmed as modified, if such appeal had been taken to the supreme court from a judgment of the circuit court. Every order of said small claims court from which an appeal is taken shall be either affirmed, reversed or modified by the circuit court, and the action in which such order was made shall be returned to the clerk of said small claims court for further proceedings according to law and in accordance with the direction of said circuit court.

(c) Every judgment of said small claims court shall be affirmed or modified and affirmed as so modified, by the circuit court, upon appeal, unless it shall find that the record is inadequate for review thereof, or unless it shall find that by reason of manifest prejudicial error in the trial a fair trial was not had in the small claims court; and in any such case if substantial justice cannot otherwise be done and the rights of the parties cannot otherwise be determined, the judgment of the small claims court shall be reversed, and the circuit court shall order the action tried in said circuit court in the same manner as if originally brought there or remand it for a new trial.

(d) At any time after the filing in the circuit court of the return upon any appeal from said small claims court, any party to the action or proceeding in which such appeal is taken, upon notice given as required on like motions in the circuit court, may move that the judgment appealed from be affirmed, or reversed, or modified and affirmed as modified, or that the order appealed from be affirmed, modified or reversed. Such motion shall be heard upon the original papers and the return of the clerk of said small claims court in the same manner as other motions in said court, except that the said circuit court shall have power to make and adopt such rules, not inconsistent with the law, to facilitate the hearing of such appeals and such motions as it may deem advisable.

(e) Whenever any judgment of the small claims court shall, upon appeal, be affirmed or modified and affirmed, the circuit court shall so order and thereupon the judgment so affirmed or as so modified and affirmed shall be entered and docketed in the circuit court in the same manner as if originally rendered therein, and it shall thereupon become for all purposes the judgment of said circuit court. The proceedings upon any appeal from any judgment or order of the small claims court, except as herein otherwise provided, shall be governed by the provisions of chapter 306, relating to appeals from justices' courts and judgments of justices of the peace, except section 306.17 thereof, so far as such provisions may be applicable thereto.

(f) If neither party brings the appeal to trial before the commencement of the third term after the term in which filing the return of the small claims court is filed, the appellate court shall, without notice, unless the action has been continued for cause, affirm the judgment appealed from with costs.

(22) EXECUTIONS. Executions shall be governed by the provisions of chapter 272.

(23) REPORTER. A reporter may be demanded by a party at the time for joining issue and shall be furnished on such demand provided the requesting party deposits with the court sufficient money to cover the cost of such reporter. In the event the judge deems it advisable to have a reporter he may appoint one to take the proceedings and the county shall pay for such expense, upon certification by the judge of such expense to the county treasurer.

(24) DOCKET. The judge of said court shall keep a docket for all cases of which he has jurisdiction. All docket entries shall be made and kept so far as practicable in the same manner as is now required under section 300.07 or may hereafter be required of justices of the peace with such modifications as may be necessary by reason of any provision of this act. The judge may in his discretion require that the docket entries be made by the clerk or any other employe of said court. Any irregularity, omission or

failure of the judge, clerk or other person designated by the judge to keep the docket, in keeping said docket shall not operate to oust said judge or court of jurisdiction or render a judgment of the court void. The judge shall have power at any time to correct or amend said docket or supply any omission therein if the error or omission is satisfactorily made to appear to said judge.

(25) **ACTING JUDGE OF THE SMALL CLAIMS COURT.** In case of the absence, sickness, inability or disability, arising from any cause, of the judge of the small claims court; or when such judge, for any cause, deems it improper for him to hear or try any proceeding in the small claims court, or before him as judge of the small claims court, he, the small claims court judge, may request the judge of the county court or the judge of any municipal court in the county orally or in writing to act in or hold court and hear and try any matter or proceeding as court or as judge of said court, and such judges are authorized and empowered, upon such request from the small claims court judge, to perform any act as judge of the small claims court as fully as the said small claims court judge is authorized and empowered to do. The small claims court judge is likewise authorized to request a qualified justice of the peace or circuit court commissioner to act in his stead and when so appointed the said justice of the peace or court commissioner shall have all the powers of the judge of the small claims court while acting as judge of the small claims court and shall receive such per diem, as may be fixed by the county board. Such request may be exercised by a circuit judge in the absence or disability of the small claims court judge.

(26) **NO REMOVAL FROM SMALL CLAIMS COURT.** No action or other proceeding before such court shall be removed from said court but whenever, prior to joining issue in any action, it shall appear by affidavit that from prejudice such judge will not decide impartially in the matter or that he is interested pecuniarily in the action or proceeding or is a material witness or is within the forbidden degree of consanguinity, he shall notify any qualified justice of the peace in the county or duly appointed court commissioner for the county, to forthwith appear in said court to try and hear said cause. And it shall be the duty of the justice of the peace or court commissioner so designated to forthwith appear in said court and discharge the duties of said judge in the trial or hearing of said cause in the same manner and with like effect as said judge would if not disqualified to act. Said justice of the peace or court commissioner while presiding in said court shall receive such per diem as may be fixed by the county board. The county court judge or superior court judge for the county may on request try and hear such causes for the judge of the small claims court.

(27) **CASES REMOVED FROM JUSTICE COURT.** If any case shall have been removed to said small claims court, from a justice court, pursuant to the provisions of section 301.245, or pursuant to any other provision of law, or pursuant to stipulation of the parties, said small claims court shall proceed to hear, try and determine the case with the same power, authority and jurisdiction as if said action had been commenced in said court.

(28) **CASES TRANSFERRED FROM SMALL CLAIMS COURT.** In any proceeding commenced before the small claims court where it shall appear that such matter is without jurisdiction of the small claims court the judge shall immediately make entry thereof in the docket and cease further proceedings in the matter; he shall collect from the plaintiff \$1 for state suit tax and \$2 for clerk's fees and certify and return to the clerk of the circuit court a transcript of the docket relating to the proceeding, and all process and other papers therein, and pay to the clerk said state tax and clerk's fees and thereafter proceedings shall be had in the circuit court as if the matter had been originally commenced therein.

(29) **EMPLOYEES OF SMALL CLAIMS COURT.** The judge of the small claims court shall in writing appoint a clerk of the small claims court and such deputy clerks as shall be authorized by the county board. The salary of said clerk and deputy clerks shall be fixed by the county board. Such clerk and deputy clerks shall handle all the clerical matters arising in the small claims court. If a reporter is authorized by the county board, he shall be appointed as provided in section 252.18 by the judge of said court. The clerk and deputy clerks shall, before entering upon the duties of their offices, take an oath faithfully and honestly to discharge the duties of such offices and shall give official bonds as the county board may require for the faithful performance of their duties, the costs thereof to be paid by the county and they to be in such form as provided by the county. Such oaths and bonds shall be filed with the county clerk.

(30) **SHERIFF'S AND CONSTABLES' POWERS.** The sheriff and constables shall have the same duty and the power to serve and execute any process of said court as provided for any other court of record and shall be subject to the same liability and penalty. The fees for such service or execution shall be as provided in justice court.

(31) JUDGE; ELECTION; TERM; COMPENSATION. There shall be elected, in the same manner as county judges are elected, a judge for each small claims court. No person shall be eligible to the office of judge of said court except an attorney of a court of record and such judge shall hold no other county office during the term he is judge thereof. He shall hold his office for a term of 6 years from the first Monday of July next following his election and until his successor is elected and qualified. Such judge shall receive such salary as the county board determines. He shall not be entitled to any fees paid into such court. Whenever a vacancy shall occur in the office of a judge of said court, the same shall be filled for the unexpired term, by appointment of some qualified person, by the governor of the state, and the person so appointed shall hold such office until his successor is duly elected and qualified.

SECTION 2. 301.245 of the statutes is amended to read:

301.245 In counties having a population of * * * less than 500,000, and in which a small claims court has been established, the defendant in any action brought in justice court, may, on the return day of the process and before any other proceedings are had on his part, make oral or written request to transfer the cause to the small claims court of said county. Upon receipt of such a request, accompanied by a fee of 75 cents, the justice shall forthwith transmit all the papers in such cause to the clerk of the small claims court of said county.

Approved June 2, 1949.
