# TITLE XXVIII.

## Courts of Justices of the Peace and Proceedings Therein in Civil Actions.*

## CHAPTER 300.

### GENERAL PROVISIONS AND JURISDICTION OF JUSTICES IN CIVIL ACTIONS.



**300.001 Definitions.** In Title XXVIII, unless the context plainly indicates otherwise:

(1) Justice means justice of the peace;

(2) Town includes village and city;

(3) Town clerk includes municipal clerk. [*1945 c. 441*]

**Comment of Advisory Committee, 1945:** Definitions are added for clarity and to save repetition. No change in the law is intended. (Bill 193-S)

**300.01 Territorial jurisdiction of justices.** The territorial jurisdiction of a justice is coextensive with the county in which he is elected, except when otherwise provided. [*R. S. 1849 c. 88 s. 1; R. S. 1858 c. 120 s. 1; R. S. 1878 s. 3568; Stats. 1898 s. 3568; Stats. 1925 s. 300.01; 1945 c. 441*]

**Revisers' Note 1878:** "Section 1, chapter 120, R. S. 1858, adding the words 'except when otherwise specially provided by law.' This exception is added for the reason that some justices of the peace, elected in cities and villages, are limited in their jurisdiction to the municipalities in which they are elected."

**Note:** 304.24 furnishes an exception to 300.01, which confines the jurisdiction of a justice of the peace to the limits of his county "except when otherwise specially provided by law." State ex rel. Fontaine v. Sullivan, 248 W 441, 22 NW (2d) 535.

Jurisdiction must appear, both as to person and subject matter, upon the face of the proceedings in justices' courts; it will not be presumed. Jones v. Hunt, 90 W 199, 63 NW 81.

Every reasonable intendment will be made in favor of jurisdiction. Coffee v. Chippewa Falls, 36 W 121; Baizer v. Lasch, 28 W 268.

**300.02 Office, where kept.** (1) Except as otherwise provided by law, every justice shall keep his office and hold court only in the town for which he was elected or in a village or fourth class city which is wholly bounded by the territory of such town. He may issue process at any place in the county.

(2) No justice shall keep his office or hold court in any room in which intoxicating liquors are sold or in any room connecting therewith. For any violation of this subsection the justice shall forfeit $25; but no judgment shall be void in consequence of such violation. [*R. S. 1849 c. 88 s. 2; R. S. 1858 c. 120 s. 2; R. S. 1878 s. 3569; Stats. 1898 s. 3569; Stats. 1925 s. 300.02; 1943 c. 287; 1945 c. 441; 1947 c. 84*]

**Comment of Advisory Committee, 1945:** "Except as otherwise provided by law" has reference to secs. 60.57 and 62.26. 60.57 makes special provision with reference to

*__Comment of Advisory Committee, 1945:__ This bill (effective Jan. 1, 1946) was prepared and is sponsored by the Advisory Committee on Rules of Pleading, Practice and Procedure. See its Report accompanying this bill and Revisor's Foreword, pages 3014 to 3015. Every section which makes a change in the law is followed by a note. The absence of a note to any section of the bill means that no change is intended by that section. (Bill 193-S)

the election of justices "In towns containing a city of the fourth class or a village wholly within its limits." 62.26 relates to justices in cities lying in more than one county. Hence "Except as otherwise provided by law" takes the place of the exception struck from (1). New (2) is taken from old 300.03. (Bill 193-S)

**300.03 Who may office with or practice before justice.** No justice shall hold court or keep his office with a practicing attorney unless the attorney is his law partner, and such partner shall not act as attorney before such justice. [*R. S. 1849 c. 88 s. 3; R. S. 1858 c. 120 s. 3; 1867 c. 105 s. 2; 1868 c. 88 s. 1; R. S. 1878 s. 3570; Stats. 1898 s. 3570; Stats. 1925 s. 300.03; 1945 c. 441*]

**Note:** Justice loses jurisdiction if action is tried at office of plaintiff's attorney. Newcomb v. Trempealeau, 24 W 459.

**300.04 Power of justices follows circuit court practice.** Where no special provision is otherwise made, justices are vested with all necessary powers which are possessed by courts of record; and all laws of a general nature apply to justice's courts so far as applicable. The place of trial shall not be changed to any other town except as provided in sections 301.24 and 301.26. [*R. S. 1849 c. 88 s. 4; R. S. 1858 c. 120 s. 4; R. S. 1878 s. 3571; 1877 c. 197; Ann. Stats. 1889 s. 3571; Stats. 1898 s. 3571; Stats. 1925 s. 300.04; 1945 c. 441*]

**Comment of Advisory Committee, 1945:** 300.04 is a practice rule and is intended to make circuit court practice apply to justice court actions in circumstances and situations where Title XXVIII fails to prescribe the procedure. No change in meaning is intended. (Bill 193-S)

**Note:** The necessary powers vested by this section in a justice's court must be confined to matters within its jurisdiction and in its proceedings according to law. State v. Gust, 70 W 631, 35 NW 559.

The return of an officer may be amended according to the facts and so as to show that the summons was properly served. Bacon v. Bassett, 19 W 45.

An irregularity in the summons may be cured by amendment after the parties have appeared. Wheeler v. Smith, 18 W 651.

**300.05 Jurisdiction.** Every justice has jurisdiction over:

(1) Actions arising out of contract wherein the amount claimed does not exceed $200;

(3) Actions on instalments as they become due on any written instrument when the amount claimed does not exceed $200;

(5) Actions on any surety bond or undertaking taken by a justice, though the penalty or amount claimed exceeds $200;

(6) Actions on any official bond when the damages claimed do not exceed $200;

(7) Actions for injuries to persons or to property wherein the damages claimed do not exceed $200;

(8) 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 $200;

(9) Actions for forcible entry and unlawful detainer;

(10) Actions for a penalty or forfeiture, not exceeding $200, given by statute;

(12) Actions to enforce a lien upon personal property where the amount claimed does not exceed $200. [*R. S. 1849 c. 88 s. 5-9; R. S. 1858 c. 120 s. 5-9; 1870 c. 30; 1871 c. 142; R. S. 1878 s. 3572; Stats. 1898 s. 3572; Stats. 1925 s. 300.05; 1945 c. 441*]

**Cross Reference:** Other sections pertaining to the civil jurisdiction of justices of the peace include the following:

61.30 Village justices; general; village in two counties.
62.24 Acting as police justice in city.
62.26 (6) City in more than one county.
291.05 Forcible entry and unlawful detainer.
300.06 Denial of jurisdiction.
300.08 Punishment for contempt.
301.06 Action by or against town.

**Comment of Advisory Committee, 1945:** As amended, (1) includes (2). (4) is covered by (1) as amended. An action on account is an action on contract, and if the complaint claims no more than $200 the justice has jurisdiction. (11) is struck out because this bill repeals the provision for confession of judgment, 302.22 * * *. (Bill 193-S)

**Revisers' Note, 1878:** "Combining sections 5, 6, 7, 8 and 9, chapter 120, R. S. 1858, as amended by chapter 30, Laws 1870, and chapter 142, Laws 1871. Sections 6, 7, 8 and 9 being made subdivisions of the section instead of separate sections, and adding a subdivision 12 giving the justice's court jurisdiction in cases of liens on personal property, when the amount does not exceed two hundred dollars. Subdivision (8) is so amended as to include section 132, chapter 120, R. S. 1858, which is therefore omitted in the chapter on replevin. Section 8, chapter 120, R. S. 1858, which is subdivision 10, is also changed to conform with the practice in actions on bonds, as prescribed in this revision. Hereafter, actions on bonds will be governed by the practice under the code, and the verdict and judgment will in all cases be for the amount of damages which the plaintiff shows himself to be entitled to recover, irrespective of the penalty of the bond."

**Note:** There is no limitation in regard to the amount involved in action under subsection (9). It is not for money. The damages sustained by reason of the detainer must be recovered in a separate action. Berger v. Discher, 146 W 170, 131 NW 444.

After jurisdiction was lost by an unauthorized adjournment, the defendant appeared and asked that the cause be continued until a certain date, which motion was granted, and by consent of the parties the action was adjourned accordingly. Defendant's appearance was voluntary and the justice thereby regained jurisdiction. Holz v. Rediske, 119 W 563, 97 NW 162.

Action on contract of sale at an agreed price of definite articles to be delivered on demand comes under subsection (1). The fact that the goods were delivered in instalments and a record kept in the form of an account does not make the action one under subsection (4). Prairie Grove C. M. Co. v. Luder, 115 W 20, 89 NW 133, 90 NW 1085.

The justice has jurisdiction where the plaintiff's claim does not exceed two hundred dollars, even though counterclaim may be put in by defendant for a larger amount,

but such counterclaim may be struck out in justice court. Martin v. Eastman, 109 W 286, 85 NW 359.

Where appeal from a judgment in justice court is tried de novo in circuit court and taken to the supreme court, in the absence of a bill of exceptions it will be presumed that the amount due was within the jurisdiction of the justice. Mathews v. Ripley, 101 W 100, 77 NW 718.

A justice has jurisdiction of an action to recover less than $200 due on a bond although the bond is for $500. Judgment goes only for the sum actually due, not for the penalty. Buechel v. Buechel, 65 W 532, 27 NW 318.

Justice's minutes cannot be referred to, in a case triable de novo on appeal, to ascertain whether the amount in controversy was beyond his jurisdiction. That fact should be shown by his certificate. If on appeal the pleadings are amended so as to make evidence of an account exceeding the justice's jurisdiction admissible proof of such account will not show that he was without jurisdiction. Sellers v. Lampman, 63 W 256, 23 NW 131.

A justice has jurisdiction of an action to recover a balance of $200 rent due upon a lease although the rents previously paid aggregated more than $500. Avery v. Rowell, 59 W 82, 17 NW 875.

Justice has jurisdiction of action for malicious and wilful injury to real property. Bandlow v. Thieme, 53 W 57, 9 NW 920.

It is only where the items of the account between the parties which still remain open to investigation exceed $500 that justice is without jurisdiction. If one item of the account sued upon is a balance alleged to be due on a previous settlement, which settlement is not denied or is found to have been made, the amount of the prior account does not affect the jurisdiction. Orr v. Le Claire, 55 W 93, 12 NW 356; Cuer v. Ross, 49 W 652, 6 NW 331.

Want of jurisdiction of the subject matter cannot be waived. Henckel v. Wheeler & Wilson M. Co., 51 W 363, 7 NW 780.

The pleadings and the report of the referee for trial showed that plaintiff's total account was in excess of $700. The answer having put the whole account in issue action was without the jurisdiction of a justice. French v. Keator, 51 W 290, 8 NW 190.

If the affidavit for a writ of replevin does not state the value of the chattels or states it over $200 the justice is without jurisdiction whatever the value is in fact. But if the affidavit states their value under $200 he has jurisdiction to issue the writ whatever the value is in fact. When the value is in fact found to be over $200 the jurisdiction ceases for all purposes except to render judgment of abatement and, whatever the judgment of the justice may have been, the circuit court determines the value de novo, for all purposes, including the justice's jurisdiction of the amount. Darling v. Conklin, 42 W 478.

Statement in affidavit for attachment that defendant is indebted to plaintiff "for work, labor and services done and performed by him for defendant," is a sufficient statement that the alleged debt is due upon contract." Ruthe v. Green Bay & M. R. Co., 37 W 344.

"Actions for injuries to persons" include injuries to the relative rights of persons as well as to their absolute rights. Wightman v. Devere, 33 W 570.

Memorandum made by justice on back of note, that plaintiff offered to release all but $100, is not an indorsement of credit or payment within the meaning of statute. Felt v. Felt, 19 W 193.

The jurisdiction is controlled by the sum claimed. If the plaintiff indorses on the note enough to bring his claim within the jurisdiction judgment may be rendered for the balance claimed and he cannot thereafter recover the sum so indorsed or remitted. McCormick v. Robinson, 2 Pin. 276.

Legal interest on a demand composes part of the amount claimed when it is included in the complaint and is to be taken into the computation in considering the question of jurisdiction. That judgment was rendered for the principal only does not affect the question where the jury allowed interest according to the claim filed. Dewey v. Hyde, 1 Pin. 469.

Where judgment is in excess of jurisdiction it cannot be validated by remitting the excess. Barker v. Baxter, 1 Pin. 407.

**300.06 Denial of jurisdiction.** No justice shall have jurisdiction of an action:

(1) Against an executor or administrator for any debt or demand due from the decedent;

(2) For libel, slander, malicious prosecution or false imprisonment;

(3) Where title to real property comes in question; or

(4) For or against the town in which the justice is elected, except as provided in section 301.06. [*R. S. 1849 c. 88 s. 10; R. S. 1858 c. 120 s. 10; R. S. 1878 s. 3573; Stats. 1898 s. 3573; Stats. 1925 s. 300.06; 1939 c. 529; 1945 c. 441*]

**300.07 Docket entries.** Every justice shall keep a docket in which he shall enter, in actions to which they relate:

(1) The title of every action commenced before him;

(2) The process issued, time it issued, when returnable, and the return of the officer;

(3) The time the parties appeared before him, either without process or upon the return of process;

(4) Where pleadings are written a brief statement of their nature and reference to the pleadings filed; and where pleadings are oral a brief statement of the complaint, the answer and any further pleadings;

(5) Every adjournment, stating at whose request and to what time and place; and if no place be named the place where the adjournment is ordered shall be taken as the place to which the action is adjourned;

(6) The issuing of a venire, stating at whose request and the time and place of its return; and if a jury is chosen by agreement, a minute of the agreement;

(7) The time when trial was had, the names of jurors summoned who did not appear, the fine imposed on each, if any, and the names of jurors sworn;

(8) The names of witnesses sworn, stating at whose request;

(9) The verdict of the jury and when received;

(10) The judgment rendered by the justice, and the time of rendering the same, and the amount of the debt, damages, costs and fees due to each person separately;

(10a) The entry required by section 300.13 in contempt convictions;

(11) The time of ordering any stay of execution and the name of the surety;

(12) The time of issuing execution and the name of the officer to whom delivered;

(13) The return of every execution and when made and every renewal of an execution, with the date thereof;

(14) The time of giving a transcript of judgment;

(15) The time of service of a certiorari brought on any judgment;

(16) The time of an appeal made from the judgment;

(17) All motions made in the action, and his decision thereon, and all other proceedings in the action which he may think useful;

(18) Failure of a justice to properly keep his docket shall not oust him of jurisdiction or render the judgment void. [*R. S. 1849 c. 88 s. 11; R. S. 1858 c. 120 s. 11; R. S. 1878 s. 3574; Stats. 1898 s. 3574; Stats. 1925 s. 300.07; Supreme Court Order, effective Jan. 1, 1935; Supreme Court Order, effective Jan. 1, 1936; 1945 c. 441*]

**Cross Reference:** Other sections requiring docket entries in civil actions include the following:

291.06 Order for publication or posting notice of unlawful detainer action.
300.13 Record of contempt conviction.
301.02 Summons issued by attorney.
301.30 Answer showing title to lands in question.
301.35 Pleadings.
302.03 Command constable to attend trial..
302.18 Verdict.
302.37 Transcript of judgment by another justice as set-off.
302.38 Setting off judgments.
304.12 Order for publication or posting of notice of attachment.
304.15 Default in attachment.
304.26 Garnishment action..
304.29 Trial in garnishment desired.
304.32 (2) Order for publication or posting when garnishee in doubt as to owner of money.
(3) Undertaking by plaintiff in such case.
304.34 Order requiring garnishee to deliver.
304.38 Default of garnishee.
305.11 Undertaking in replevin.
305.16 Notice in replevin when defendant does not appear.
305.17 Default in replevin.
306.09 Order for delivery of property in replevin.
307.02 Order for witness fee over $15.
307.09 Surety to sign memorandum on docket (security for costs).

**Comment of Advisory Committee, 1945:** "Action" is used throughout this bill, rather than "case," "cause," or "suit." * * * The addition to (6) is from 302.09. There are many scattered provisions relating to docket entries. It seems impractical to move them all to 300.07 * * *, (18) is new. Many have complained of the amazing ease with which jurisdiction is lost in justice court by reason of some minor technical defect. New (18) will tend to correct that situation, as far as docket entries are concerned. New (10a) is from 300.13. (Bill 193-S)

**Note:** The entries of justices of the peace in their dockets, which in effect finally determine the issue involved, should be treated as judgments regardless of their form. Diehl v. Heimann, 248 W 17, 20 NW (2d) 556.

Prior to the amendment effective Jan. 1, 1936, failure of a justice of the peace to enter in his docket the place to which an adjournment of an action is taken resulted in a loss of jurisdiction under (5). Shefelker v. First Natl. Bank, 207 W 510, 242 NW 137.

A loss of jurisdiction by an illegal adjournment is cured by the appearance of the parties on the adjourned day and proceeding to trial. Christopher v. Jerdee, 152 W 367, 139 NW 1132.

Justice's docket need show only the matters required by statute. McGheehan v. Bedford, 128 W 167, 107 NW 296.

An entry in the docket "summons returned and filed showing personal service" held to show a personal service on the defendant; also entry that the attorney for the plaintiff appears and files a written complaint and proof of debt held sufficient. Sullivan v Miles, 117 W 576, 94 NW 298.

The word "adjournment" excludes necessary intermissions for the purpose of obtaining food and sleep which are not subject to the requirement that they be entered upon the docket with particularity. State ex rel. Dunlap v. Nohl, 113 W 15, 88 NW 1004.

Prior to 1945, the facts essential to jurisdiction must appear wholly from the docket entries. The appellate court cannot consider either a supplemental return of matters wholly outside the record or the evidence returned by him. Crate v. Pettepher, 112 W 252, 87 NW 1104.

There is no requirement that the justice sign entries in his docket. It is the better practice for him to do so but the absence of a signature will not affect the jurisdiction. Fulton v. Meiners, 103 W 238, 79 NW 234.

It is not essential to the jurisdiction of the justice in case of the adjournment that the docket shall show that the adjournment was for cause or the cause of the adjournment. State ex rel. Dearborn v. Merrick, 101 W 162, 77 NW 719.

If the docket does not show the nature of the action or of the plaintiff's claim or that there were any pleadings, and nothing in the return to a certiorari gives any information in respect thereto, the judgment of the justice will be reversed. Jones v. Hunt, 90 W 199, 63 NW 81.

Prior to the amendment effective Jan. 1, 1936, the failure of a justice to enter on his docket the time and place to which a criminal case is adjourned makes the imprisonment of the accused after such adjournment unlawful. If the loss of jurisdiction can be waived by an appearance it must be voluntarily made. An appearance to avoid default on a bond and the loss of money deposited as security is not voluntary. Brosde v. Sanderson, 86 W 368, 57 NW 49.

An adjournment was implied from the following docket entry: "Defendant appeared personally and asked for an adjournment of one week, until the 27th day of April, at 1 o'clock P. M. at this, my office, Ashland, Ashland county, Wis." Johnson v. Iron B. M. Co., 78 W 159, 47 NW 363.

A recess was taken at 2 o'clock P. M. until 10 o'clock A. M. of the following day, on account of the illness of the justice. This was not an adjournment. French v. Ferguson, 77 W 121, 45 NW 817.

Mandamus will issue to compel a justice to make entries in his docket according to the facts; but entries made therein import verity and the writ will not lie to compel him to enter therein a statement contrary to what is already shown thereby. State ex rel. Green v. Van Ells, 69 W 19, 32 NW 32.

Where adjournment is by agreement to a stated day, failure in making entry thereof to state the year does not affect jurisdiction, as the current year will be understood to have been intended. Stromberg v. Esterly, 62 W 632, 22 NW 864.

It is not required that the exact hour of calling the case should be entered. When the docket shows that the case was called on the return day it will be presumed that it was called at the hour specified in the process. Driscoll v. Smith, 59 W 38, 17 NW 876.

Where the case was adjourned to 3 o'clock but was called at 2 o'clock, and plaintiffs appeared at 3 o'clock, filed proof of publication and asked leave to amend their complaint, and the docket recites "whereupon judgment is hereby rendered," this "whereupon" may mean at 4 o'clock. Every reasonable intendment should be made in support of the proceedings. Storm v. Adams, 56 W 137, 14 NW 69.

Where summons and pleadings show names of all the parties judgment will not be reversed because docket entry, after giving name of one plaintiff, designated the others as "et al." Campbell v. Babbitts, 53 W 276, 10 NW 400.

Where record shows that cause was adjourned to justice's office and that at time specified he called the cause, without stating where, presumption is that it was called at his office. Cassidy v. Millerick, 52 W 379, 9 NW 165.

Omission to make entry in garnishment proceeding until after entry of principal judgment, though there had been a previous adjournment in both actions, not fatal to judgment against garnishee. Bushnell v. Allen, 48 W 460, 4 NW 599.

Statement in docket that plaintiff, on return day of writ, introduced affidavit on which warrant of attachment was issued as his complaint, had same effect as if it had been copied into docket as complaint. Ruthe v. Green Bay & M. R. Co., 37 W 344.

Failure to enter brief statement of nature of complaint not fatal to jurisdiction. Coffee v. Chippewa Falls, 36 W 121.

The requirement that the justice state in his docket the fees due to each person separately is directory. Nett v. Serwe, 28 W 663.

The following entry held to be a valid judgment: "The court is of the opinion that the plaintiff has no cause of action. Judgment against the plaintiff for costs of suit. Costs, $13.31." Nett v. Serwe, 28 W 663.

Jurisdiction not lost by docket entry that cause was adjourned to a specified day "at 10 o'clock A. P." instead of A. M. Taylor v. Wilkinson, 22 W 40.

Judgment will not be reversed on certiorari because the docket does not show that security was filed although an order was filed requiring it to be given. Taylor v. Wilkinson, 22 W 40.

The provision that the justice enter in his docket the return of the officer is directory merely. Bacon v. Bassett, 19 W 45.

It is not necessary that docket show county or town in which court was held or that it was held at time and place appointed in summons, or at what hour suit was called and judgment rendered. Bacon v. Bassett, 19 W 45.

Docket may be put in evidence to prove a judgment without previous oral proof that it contains a record thereof. Selsby v. Redlon, 19 W 17.

Statement in the return that parties "appeared," in the absence of qualification, taken to be a general appearance. Cron v. Krones, 17 W 401.

The statute in force in 1855 required the justice to take full minutes of all evidence given before him and to file the same among the papers in the case. The failure to enter the evidence in his docket was immaterial. Martin v. Beckwith, 4 W 219.

Judgment docket of circuit court is prima facie evidence of the validity of a judgment of justice a transcript whereof is there filed. Atchison v. Rosalip, 3 Pin. 288.

**300.08 Contempts.** In the following cases, and no others, a justice may punish for contempt:

(1) Persons guilty of disorderly, contemptuous and insolent behavior towards him, while engaged in any judicial proceeding, or other conduct, which tends to interrupt such proceeding or impair the respect due his authority;

(2) Persons guilty of resistance or disobedience to any lawful order or process made or issued by him. [*R. S. 1849 c. 88 s. 249; R. S. 1858 c. 120 s. 219; R. S. 1878 s. 3575; Stats. 1898 s. 3575; Stats. 1925 s. 300.08; 1945 c. 441*]

[*300.09 renumbered 307.025 by 1945 c. 441*]

**300.10 Contempt, penalty.** Punishment for contempts may be by fine not exceeding $20 or by imprisonment not exceeding 2 days. [*R. S. 1849 c. 88 s. 250; R. S. 1858 c. 120 s. 220; R. S. 1878 s. 3576; Stats. 1898 s. 3576; Stats. 1925 s. 300.10; 1945 c. 441*]

**300.11 Accused to be heard.** No person shall be punished for contempt before a justice until an opportunity has been given him to be heard in his defense, and for that purpose the justice may, if the offender is not present, issue his warrant to bring the offender before him. [*R. S. 1849 c. 88 s. 251, 252; R. S. 1858 c. 120 s. 221, 222; R. S. 1878 s. 3577; Stats. 1898 s. 3577; Stats. 1925 s. 300.11; 1945 c. 441*]

**300.12 Form of warrant for contempt.** The warrant for contempt may be in substantially the following form:

State of Wisconsin, } In Justice Court
.... County. } Before .... ...., Justice of the Peace

The State of Wisconsin, to the sheriff or any constable of said county:

You are hereby commanded to apprehend A. B. and bring him before me, at my office at .... (location of office), to show cause why he should not be convicted of a criminal contempt alleged to have been committed on the .... day of ...., 19.., before me while engaged as a justice of the peace in judicial proceedings.

Dated ...., 19 ..

.... ...., Justice of the Peace.

[*R. S. 1849 c. 88 s. 253; R. S. 1858 c. 120 s. 223; R. S. 1878 s. 3578; Stats. 1898 s. 3578; Stats. 1925 s. 300.12; 1945 c. 441*]

**Comment of Advisory Committee, 1945:** An attempt has been made to simplify the justice court practice forms. Captions are made uniform, as shown above. The word "substantially" is inserted in this and other sections providing forms, the intention being to make the forms directory and not mandatory. Many form sections already contain the word "substantially." The justice must hold court in his town (except as provided in 300.02) but his jurisdiction is county-wide and his process may be issued by an attorney and can be served anywhere in the county. Formerly the justice had to enter in the process the name of the town, city or village where it was issued, but that requirement was eliminated by ch. 20, laws of 1903. See 300.01, 300.02 and 301.02.

The place to which the prisoner is to be brought is made more definite. In towns the residence of the justice is his office, but in villages and cities his office is apart from his home. Generally the street and even the office number can and should be given. (Bill 193-S)

**300.13 Record of contempt conviction.** Upon the conviction of any person for contempt the justice shall make a record of the proceedings, stating the particular circumstances of the offense and the judgment rendered, and shall file such record in the office of the clerk of the circuit court and shall also enter it in his docket. [*R. S. 1849 c. 88 s. 254; R. S. 1858 c. 120 s. 224; R. S. 1878 s. 3579; Stats. 1898 s. 3579; Stats. 1925 s. 300.13; 1945 c. 441*]

**300.14 Form of record.** The record of conviction may be in substantially the following form:

State of Wisconsin, } In Justice Court
.... County. } Before .... ...., Justice of the Peace

Whereas, on the .... day of ...., 19 .., while the undersigned justice of the peace in said county, was engaged in the trial of an action, A. B. interrupted the proceedings and impaired the respect due to the authority of the undersigned by (here describe the cause particularly); [or whereas, the undersigned justice of the peace in said county, issued a lawful process (or made a lawful order) in a certain action, requiring (here set forth the substance of the process or order), and whereas, A. B. was guilty of disobedience to said process (or order), (or was guilty of resistance to said process or order) by (here set forth the means of disobedience or resistance) ]; and whereas, said A. B. was thereupon required by the undersigned to answer for said contempt and show cause why he should not be convicted thereof; and whereas, he did not show any cause against the said charge; therefore said A. B. is adjudged guilty and is convicted of the criminal contempt aforesaid, before the undersigned, and is adjudged to pay a fine of $ .... (or to be imprisoned in the county jail for .... days or until he be discharged according to law).

Dated ...., 19 ..

.... ...., Justice of the Peace.

[*R. S. 1849 c. 88 s. 256; R. S. 1858 c. 120 s. 226; R. S. 1878 s. 3580; Stats. 1898 s. 3580; Stats. 1925 s. 300.14; 1945 c. 441*]

**300.15 Commitment for contempt.** The commitment for contempt shall set forth the circumstances of the offense and may be in substantially the following form:

State of Wisconsin, } In Justice Court
.... County. } Before .... ...., Justice of the Peace

The State of Wisconsin, to the sheriff or any constable of said county:

Whereas, A. B. was duly convicted by the undersigned justice of the peace, of a criminal contempt, as appears by the record of conviction, (a copy of which record is hereto attached and made part hereof), you are commanded to take A. B. to the keeper of the county jail, who is hereby commanded to receive and keep him in jail until the sum of $.... and all legal expenses are paid (or, if judgment is that he be imprisoned, for .... days), or until he is discharged therefrom by due course of law.

Dated ...., 19 ..

.... ...., Justice of the Peace.

[*R. S. 1849 c. 88 s. 255; R. S. 1858 c. 120 s. 225; R. S. 1878 s. 3581; Stats. 1898 s. 3581; Stats. 1925 s. 300.15; 1945 c. 441*]

**Revisers' Note, 1878:** "Section 225, chapter 120, R. S. 1858, adding a form. It was thought best to provide a form of commitment so as to enable the justice to enforce his judgment without running the risk of being prosecuted for false imprisonment on account of informality of his warrant."

**300.16 Disobedient witness.** When any witness before a justice in any action refuses to be sworn or to answer any proper question the justice may by order commit him to the county jail. The order shall specify the reason for which it is issued, and if it is for refusing to answer any question, the question shall be specified; and the witness shall be closely confined until he consents to be sworn or to answer. [*R. S. 1849 c. 88 s. 12, 257, 258; R. S. 1858 c. 120 s. 227, 228; R. S. 1878 s. 3582; Stats. 1898 s. 3582; Stats. 1925 s. 300.16; 1945 c. 441*]

**300.17 Same; adjournment.** The justice shall thereupon adjourn the action, at the request of the party desiring the testimony, for a reasonable time or until the witness shall testify. [*R. S. 1849 c. 88 s. 13, 259; R. S. 1858 c. 120 s. 229; R. S. 1878 s. 3583; Stats. 1898 s. 3583; Stats. 1925 s. 300.17; 1945 c. 441*]

**300.18 Justice's liability for moneys collected.** Every justice and his sureties shall be liable on his official bond to every person for whom he collects money which he neglects to pay; and any person to whom the justice is so liable, may sue him and his sureties therefor; and on proof that the justice has neglected to pay any money by him collected, judgment shall be given against the defendants for the money so collected, with interest and costs according to the condition of the bond. [*R. S. 1849 c. 88 s. 262; R. S.*

*1858 c. 120 s. 232; R. S. 1878 s. 3584; Stats. 1898 s. 3584; Stats. 1925 s. 300.18; 1945 c. 441*]

**300.19 Papers, how kept.** Every justice shall file and keep together all papers in any action, separate from all other papers. [*R. S. 1849 c. 88 s. 270; R. S. 1858 c. 120 s. 240; R. S. 1878 s. 3585; Stats. 1898 s. 3585; Stats. 1925 s. 300.19; 1945 c. 441*]

**300.20 Delivery of docket to another justice.** If any justice is to be absent from the county for 3 days or more or is unable from sickness to attend to business, and any action is pending before him, he may call in some other justice of his town or he may deliver his docket and all papers relating to such action, with a minute of his proceedings therein, to the nearest available justice of the county who may thereupon proceed to try the action in the same manner as if it had been commenced before him and with like effect; but the parties, their agents or attorneys shall be notified of the transfer previous to trial; and the justice may, while the docket remains in his possession, issue execution upon or give a certified transcript of any unsatisfied judgment appearing therein. [*R. S. 1849 c. 88 s. 272; R. S. 1858 c. 120 s. 242; R. S. 1878 s. 3586; Stats. 1898 s. 3586; 1903 c. 346 s. 1; Supl. 1906 s. 3586; Stats. 1925 s. 300.20; 1945 c. 86, 441*]

**Comment of Advisory Committee, 1945:** The amendment provides for transferring the docket to the nearest justice of the county and not necessarily of the town. (Bill 193-S)

**Revisers' Note, 1878:** "Section 242, chapter 120, R. S. 1858, amended so as to make the sections apply to cases of absence of the justice from the county, and authorizing the justice receiving such docket to issue execution and transcripts upon judgments therein."

**Note:** This section governs when the justice is unable to proceed because of sickness; he cannot adjourn the case for a second time unless in accordance with the provisions of section 301.40. Gallagher v. Serfling, 92 W 544, 66 NW 692.

[*300.21 consolidated, revised, renumbered 300.22 by 1945 c. 441*]

**300.22 Delivery of books to town clerk.** When the office of a justice becomes vacant, the books and papers belonging to his office shall be delivered, within 10 days after the vacancy happens, to the town clerk, by the person who is in possession thereof. [*R. S. 1849 c. 88 s. 273, 274; R. S. 1858 c. 120 s. 243, 244; R. S. 1878 s. 3587, 3588; Stats. 1898 s. 3587, 3588; Stats. 1925 s. 300.21, 300.22; 1945 c. 441*]

**Comment of Advisory Committee, 1945:** What creates a vacancy in the justices' office is determined by section 17.03. The rule is made general that upon the occurrence of a vacancy the books and papers of the last occupant shall be delivered to the town clerk. The present statutes are complicated and obscure. Under old 300.21, when a justice's term expires he is to deliver the books to the "nearest justice," but in the case of vacancies from other causes the books go to the town clerk (old 300.22 and 300.23). The new rule is simple, definite and workable. What shall be done with those books and papers is designated by 300.24. (Bill 193-S)

**300.23 Books demanded by town clerk.** If any books or papers which should be delivered to the town clerk pursuant to section 300.22 are not delivered within the time there specified, the town clerk shall demand their delivery to him and may by action compel such delivery. [*R. S. 1849 c. 88 s. 275; R. S. 1858 c. 120 s. 245; R. S. 1878 s. 3589; Stats. 1898 s. 3589; Stats. 1925 s. 300.23; 1945 c. 441*]

**Comment of Advisory Committe, 1945:** This section is made general as to books and papers which should be delivered to the town clerk, and it is provided that he may compel delivery by action. Where the books are to go in case the justice dies is covered by new 300.22. (Bill 193-S)

**300.24 Duty of clerk on receipt of books.** When any town clerk receives the books or any papers of any justice he shall, within 10 days after receiving them, deliver them to some justice of the town or, if there is no justice in the town, then to some justice in the county. The town clerk shall publish a notice in a newspaper published in the county, specifying the name of the justice whose books and papers have been so delivered and to what justice and when the same were delivered. [*R. S. 1849 c. 88 s. 276, 277; R. S. 1858 c. 120 s. 246, 247; R. S. 1878 s. 3590; Stats. 1898 s. 3590; Stats. 1925 s. 300.24; 1945 c. 86, 441*]

**Comment of Advisory Committee, 1945:** Publication is substituted for posting. A provision is added to take care of a situation where there is no "other justice of the same town." (Bill 193-S)

**300.25 Pending actions triable by justice who receives books.** When any action is pending before any justice at the time his office becomes vacant and his books and papers have been delivered to any other justice pursuant to law, the last-named justice may try such action and enter judgment and issue execution thereon, as though the action had been begun before him. He may issue execution and transcripts upon any judgment appearing upon said books. [*R. S. 1849 c. 88 s. 278, 280; R. S. 1858 c. 120 s. 248, 250; 1869 c. 120; R. S. 1878 s. 3591; Stats. 1898 s. 3591; Stats. 1925 s. 300.25; 1945 c. 441*]

**Note:** This section includes the case of a justice who ceases to be such by reason of the expiration of his term. Transcripts of judgments rendered by a justice, duly certified by his successor, are entitled to be docketed. Stamm v. Dixon, 49 W 328, 5 NW 858.

**300.26 Continuance on vacancy; notice of trial.** All actions before any justice undetermined when his office becomes vacant are continued until the expiration of 10 days

from the time when his books and papers were delivered to another justice; of which time the justice to whom the books and papers were delivered shall give at least 3 days' notice to the parties to the action who are within the county. [*R. S. 1849 c. 88 s. 279; R. S. 1858 c. 120 s. 249; R. S. 1878 s. 3592; Stats. 1898 s. 3592; Stats. 1925 s. 300.26; 1945 c. 86, 441*]

**300.30 Mistaken remedy or court; transfer to proper court.** When an action which is outside the jurisdiction of a justice has been tried and judgment entered in justice court and the action has been appealed, the appeal operates as a transfer of the action to the appellate court and that court shall proceed as though the action had been commenced therein. [*1945 c. 441*]

**Comment of Advisory Committee, 1945:** 300.30 is an adaptation to justice courts of the part of 269.52 which provides that where a plaintiff has mistaken his court or his remedy he shall not be summarily dismissed but his action shall be transferred to the proper court. It seems reasonable and just that when parties have tried their dispute in justice court and the action has been appealed to the circuit court, and the subject of the action is within the jurisdiction of the circuit court, the action should not be dismissed by the circuit court or the supreme court on the mere technicality that the justice did not have jurisdiction. Section 269.52 is modern. It was created in 1915 by ch. 219 and has proved its worth in many cases; see annotations. (Bill 193-S)

## JUSTICE COURT—CIVIL CODE

### Foreword

Chapter 441, laws of 1945, (effective Jan. 1, 1946) is a revision of Title XXVIII—Courts of Justices of the Peace and Proceedings Therein in Civil Actions. The title contains 8 chapters—300 to 307. The revision bill (No. 193-S) was drafted by the Advisory Committee on Rules of Pleading, Practice and Procedure (section 251.18, Stats.). Mr. Eugene G. Williams of Oshkosh, Wisconsin, of a subcommittee, contributed generously of his time and talent to this work over a two-year period. The printed bill carried many explanatory comments. Those comments (so far as they are still helpful) are printed in these statutes following the several sections to which they relate. Those comments should prove useful to the legal profession, especially in connection with section 370.01 (49), Stats.

The legislative history of each section of the 8 chapters is printed in italics and enclosed in brackets at the end of the section. That history is a consolidation of the references given in the 1930 Wisconsin Annotations and of subsequent legislative action. The history now given is intended to be complete; i.e. you need "seek no further."

So too, the annotations—new and old—are consolidated. That is to say that the 1930 Annotations and the cumulative continuations thereof have been worked over and consolidated to make the present annotations complete from 1848 to the present time. So far as chapters 300 to 307 are concerned, there is now no occasion to go to the 1930 Annotations or to the 1943 Wisconsin Statutes for a digest or citation of cases.

A word should be said about the plan pursued in writing and arranging the annotations to supreme court decisions.

1. They are arranged in reverse of their chronological order. The latest case is cited first. The oldest case is cited last—if at all. This is done upon the assumption that a lawyer, when he consults the annotations, usually wants to know what the law is now, rather than what it was in times past; and that he is most likely to find his answer in the latest decision.

2. Only one case is cited in support of a point or proposition. It is not uncommon to find 1, or 2 or 3 Pinney cited in a very recent decision. For example Shefelker v. First National Bank, 207 W 510, cites Roberts v. Warren, 3 W 736, to the proposition that a justice lost jurisdiction if he failed to write *in his docket* the *place* to which the action is adjourned. Is there any sound reason for citing the old case in the annotations? None is perceived. If you care to pursue your study beyond the Shefelker case, you have, in it, a citation to the ancient decision. Needless citation of decisions wastes space and time. Most books are too large; most of them could be improved by condensation and deletion. The 1930 Annotations could have been shortened to advantage. That is also true of the Wisconsin Statutes. The revisor has plodded and is plodding toward that goal—very slowly. The going has not always been good.

The treatment of the annotations to the justice court chapters is a sort of trial balloon. It is also a sort of preview of what the next complete edition of annotations may be. A new edition is about due. We have the 1914 edition and the 1930 edition. The former came 16 years after the 1898 Wisconsin Statutes Annotated and 16 years earlier than the 1930 edition. Another 16 year-period has elapsed. Wisconsin should publish a complete volume of annotations in 1948 and call it the "Centennial Annotations".

I hope that the job will be undertaken in time. An appropriation will be needed to employ additional help but the expense will be returned to the state if the book is sold at cost. The appropriation would merely be an advance to enable the work to be done.

E. E. BROSSARD
Revisor.

## REPORT

OF THE ADVISORY COMMITTEE ON RULES OF PLEADING, PRACTICE AND PROCEDURE TO THE STATE LEGISLATURE ON A BILL TO REVISE TITLE XXVIII OF THE STATUTES RELATING TO COURTS OF JUSTICES OF THE PEACE AND PROCEEDINGS THEREIN IN CIVIL ACTIONS.

**To the Legislature:** The advisory committee on rules of pleading, practice and procedure (created by section 251.18 of the statutes) reports as follows:

In 1935 this committee made a complete revision of the rules of civil procedure in courts of record. That revision was reported to and acted on by the supreme court, and to and by the legislature as Senate Bills Nos. 50 and 75.

Justice court procedure was not then revised. That practice, in fact, has not been revised since 1878. Even in the Revised Statutes of 1878, justice court procedure is still strikingly like it is in the Revised Statutes of 1849, both in style and in substance. Hence a thorough and complete revision of justice court procedure is past due.

Such a revision was undertaken by this committee about two years ago. A subcommittee was then appointed to draft a preliminary or tentative revision of chapters 300 to 307 of the statutes. The subcommittee made a report to this committee in the form of a legislative revision bill. That report was mimeographed. It has been examined section by section (including the notes) and amended as this committee deemed best to provide an up-to-date justice court code, expressed in the plainest, simplest language possible, and calculated to promote the "speedy determination of litigation upon its merits" (251.18).

Accompanying this report and forming part of it is the aforementioned revision bill, intended for introduction in the legislature.

Most of what this report proposes falls within the rule-making power of the supreme court. But there are revised provisions of the statutes which involve the jurisdiction of courts and some that affect substantive rights. And those provisions are without the jurisdiction of the supreme court. They are exclusively within the jurisdiction of the legislature. The problem thus presented could be solved in two ways:

**First:** Report to the supreme court all recommendations for changes in rules which are strictly procedural; and report to the legislature the changes which affect jurisdiction of the courts and those which affect substantive rights, together with changes which are simply verbal; or

**Second:** Report the entire revision to the legislature.

Upon careful consideration and full inquiry, the committee chose the second solution or plan. The committee is convinced that is more likely to promote and preserve the symmetry of the revision; will more readily yield to amendment by legislative committee action; and be least expensive. This committee sees no sound objection to proceeding in that manner.

This report is delivered to the joint committee on revisions, repeals and uniform laws for presentation to the legislature.

The advisory committee has requested and hereby requests said joint committee to present this report to the legislature, with any amendments to the proposed bill which the joint committee deems advisable.

The opening paragraphs of the court's opinion in De Laval Separator Co. v. Hofberger, 161 W 344, gives strong support to a complete revision of justice court practice:

"Timlin, J. About four years ago the appellant began suit in justice's court against the respondent to recover a balance of $4.35. This trifling controversy has been in litigation ever since in justice's court, circuit court, and now in the supreme court. It is not denied that the respondent owes this sum to the appellant, but the litigation has been over the question whether the appel-

lant proceeded properly, or rather whether the appellant's lawyer and the justice of the peace proceeded properly, in appellant's attempt to collect this small sum.

"The science of jurisprudence must be far from perfection when the real object and purpose of an action can be lost sight of and a judicial controversy relating to questions of procedure and having no concern with the merits of the action in this way substituted for the real controversy between the parties. Courts of justices of the peace are recognized in the constitution and statutes of this state and they are supposed to furnish cheap and convenient tribunals for the determination of petty differences which may arise between parties. It requires no argument to establish that the way to such courts should be smooth and easy. It was long ago declared to be the law that such inferior tribunals must keep strictly within the limits of the jurisdiction conferred upon them; but this does not mean that the superior courts are to be hostile to their judgments or solicitous to trip them up for every petty error. It means that the justices are to exercise only the jurisdiction conferred upon them by statute fairly interpreted. This court has been for some time engaged in an attempt to mitigate the rigor of some of the ancient rules on this subject. Cowles v. Neillsville, 137 Wis. 384, 119 N. W. 91; State ex rel. Cooper v. Brazee, 139 Wis. 538, 541, 121 N. W. 247; Kremer v. Arians, 141 Wis. 662, 124 N. W. 1064; Kuehn v. Nero, 145 Wis. 256, 130 N. W. 56; State ex rel. Kassner v. Momsen, 153 Wis. 203, 140 N. W. 1117."

It is high time the court or the legislature or both not only *"attempt* to mitigate the rigor of *some* of the ancient rules" of justice ocurt practice but actually proceed to extirpate all "the ancient rules" so dear to tricky practitioners. Now is the time to improve our "science of jurisprudence." Such is the purpose of this revision.

As an example of miscarriage of justice due to technicalities, take Johnson v. Turnell, 113 W 468. The action was on a promissory note upon which $50 and interest were due. The summons was in due form but had been signed in blank by the justice and delivered to an attorney who later filled it out. The defense was the 6-year statute of limitations. The sixth year expired after the date of the summons and prior to the return day. The case was tried in justice court, the superior court and the supreme court. It was held that each of the 6 requirements of a summons was mandatory; that the summons must be complete when the justice issued it and that the summons in this case was void. The legislature, at the next session, authorized justices to sign summonses in blank and deliver them to attorneys to be filled out and issued "as occasion may require." (Ch. 20, laws of 1903, effective March 20, 1903). Johnson v. Turnell was decided March 11, 1902. This was piecemeal reform of procedure. The reform should be wholesale. It is a travesty that pure technicalities should delay or prevent justice in justice court, yet that is just where they "do most abound."

Shefelker v. First National Bank, 207 W 510 (decided April 5, 1932) is another example of miscarriage of justice due to a technicality. The bank sued Shefelker, in justice court, for unlawful detainer of office rooms in the bank building. The case was duly called for trial. At the request of the defendant, adjournment was taken for 2 days. The justice wrote in his docket: "Case adjourned until Monday, March 31st, 9 a. m." On the adjourn day the defendant was present in justice court with his attorney and examined the docket. Noticing that the docket did not state the "place to which the adjournment was taken," the defendant took no part in the proceedings and refused to "appear."

The justice entered in his docket: "Defendant fails to appear." Judgment was entered against him. He brought certiorari. "In the circuit court the judgment of the justice court was reversed on the ground that the place to which the case was adjourned was not stated in the docket"! March 21, 1930 the bank began its action to get possession of rooms which were unlawfully detained. April 5, 1932 (over 2 years later) the bank was told that it had "gotten nowhere." Another travesty; another victory for technicality; another event which helped to bring law and lawyers and courts into disrepute. The court supported its decision by citing Roberts v. Warren, 3 W 736, decided in 1854. This pitfall had existed 68 years; and nothing done to remove it from the path of justice. It was removed by a Supreme Court Rule, effective Jan. 1, 1936. Another instance of tardy and piecemeal reform in procedure where there should now be a general modernizing of practice to the end that more certain and speedy justice may be obtained.

In every instance where the bill makes a change in the law, substantive or procedural, a note is appended calling attention to the change. The absence of a note to any section of the bill signifies that the intention is not to change the meaning.

In this connection, attention is called to section 370.01 (49), which reads:

"A revised statute is to be understood in the same sense as the original unless the change in language indicates a different meaning so clearly as to preclude judicial construction. And where the revision bill contains a note which says that the meaning of the statutes to which the note relates is not changed by the revision, the note is indicative of the legislative intent."

This binding, statutory rule for the construction of *revised provisions* of the statutes gives the draftsman far greater freedom than he would otherwise possess in compacting the diction and restating the law "according to the common and approved usage of the language" (370.01 (1) ). That freedom has been exercised in writing this bill.

Respectfully submitted,
ADVISORY COMMITTEE ON RULES OF PLEADING, PRACTICE AND PROCEDURE
By A. W. Kopp, Chairman
E. E. Brossard, Secretary

Feb. 12, 1945