

No. 396, A.]

[Published June 15, 1927.]

CHAPTER 219.

AN ACT to confer civil and criminal jurisdiction on the county court of Polk county and to fix the salary of the judge thereof. *The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

SECTION 1. There is hereby conferred on the county court of Polk county, jurisdiction of the following actions, matters and proceedings, to wit:

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

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

3. Subject to the exceptions aforesaid, the said county court shall be a court of general jurisdiction, with the same power and jurisdiction as have been heretofore, are now, or may hereafter be conferred by the constitution or statutes of this state upon the circuit courts of the state.

SECTION 2. All actions commenced before a justice of the peace or municipal judge in Polk county, wherein the title to lands will come in question, and which were heretofore required by law to be sent and certified to the circuit court, may hereafter, at the election of the party making the plea or answer showing that the title to lands will come in question, be sent and certified to the county court.

SECTION 3. Appeals from judgments of justices of the peace and of municipal judges in said county shall hereafter be taken to the county court of said county and such appeals shall be tried and determined therein in the same manner as is by law required in the circuit court of Polk county, and in accordance with the rules and practice of said circuit court in force at the time of said trial, except as herein provided, and all laws providing for taking appeals in civil actions from justices of the peace or municipal

judges, or justices' courts or municipal courts shall hereafter be construed to apply equally to such appeals taken to said county court. If such appeal be taken in form to the circuit court of said county, it shall nevertheless vest jurisdiction of such appeal in said county court.

SECTION 4. The said county court, within the limits aforesaid, shall be a court of record, with a clerk and seal, and shall have full power and authority to issue all writs and legal process, proper and necessary to carry into effect the jurisdiction conferred by this act and the laws of this state, and to carry out such jurisdiction said court and the judge thereof shall have and exercise all the powers now possessed, or which may hereafter be possessed by the circuit courts of this state and the judges thereof, and the same proceedings shall be had to procure such writs and process, and such writs and process shall be issued, executed and returned in the same manner and with like effect as in the circuit courts.

SECTION 5. All examinations, recognizances and commitments from or by any examining magistrate of said county in bastardy cases and in all criminal actions within the jurisdiction of this court, shall be certified and returned within the time prescribed by law to such county court, or to the circuit court if demanded by the defendant, and the attendance of witnesses upon the trial of any person so committed shall be procured in the same manner as provided by law in the circuit court, and the said court shall have power to appoint an attorney to defend a person charged with an offense in the same manner and upon the same conditions as the circuit court may now or hereafter appoint an attorney to defend a person charged with an offense.

SECTION 6. Every issue of law in any civil action or proceeding in said court, and every issue of fact in any action heretofore cognizable in a court of equity, shall be tried by the court, but the court may order such issue of fact tried by a jury; every civil action properly triable by a jury, and not heretofore cognizable in a court of equity, shall on demand of either party, as hereinafter provided, be tried by a jury of twelve persons, unless a less number be agreed upon by the parties, and if no jury be demanded by either party, shall be tried by the court. Every criminal action shall be tried in the same manner as in circuit court.

SECTION 7. All judgments, orders and decrees made and entered in and by said county court, shall have the same force, effect and lien and be executed and carried into effect and enforced in the same manner as judgments, orders and decrees made and entered in the circuit court, and all remedies given and proceedings provided for the collection and enforcement of the judgments, orders and decrees of the circuit court, shall apply to and be exercised by and pertain to said county court. Actions for the foreclosure of liens, wherein the claim for lien has been filed in the office of the clerk of the circuit court, may be brought, heard and determined in and by said county court, in the same manner and with like effect as if brought in the circuit court.

SECTION 8. All orders and judgments of said county court may be reviewed by the supreme court, in the same manner and with like effect as judgments and orders of the circuit court may be reviewed; and the supreme court shall have the same power and jurisdiction over such actions, proceedings, orders and judgments as it has over actions, proceedings, orders and judgments in the circuit court of said county, and the parties shall have the same right to writs of error and appeal from said county court to the supreme court of this state as is now or may hereafter be allowed by law from circuit courts of this state, and may demand and shall be entitled to receive from the judge of said county court a bill of exceptions and have the same settled in the same manner and under the same restrictions as in the circuit court and the same shall be heard and settled within the same time as is now required or may hereafter be required in the circuit court by the law or rules and practice of said circuit court or of the county court relative thereto.

SECTION 9. There shall be held at the county seat of said county a general term of said county court on the second Tuesday of each of the following months, to wit: January, February, March, May, June, September, November and December in each year and special terms of said county court may be called and held by order of the judge of said court at such time and place in said county as shall by such order be fixed.

SECTION 10. Within the jurisdiction of said court, judgment may be had and entered in vacation, if the defendant fail to answer the complaint, in the same manner and in like cases wherein judgment may now be had and entered in the circuit court in vacation, and the clerk of said court shall have the same

powers and authority relative thereto as he has by law or otherwise in circuit court.

SECTION 11. If the judge be unable to attend and hold any general or special term of said court on the day appointed, he may by order adjourn said term to a day certain. Any circuit judge or judge of a county court having civil and criminal jurisdiction may upon the request of the judge of this court, hold said court and while so doing he shall have the power and authority herein conferred upon the county judge of Polk county. If no such order or request be made, the court shall stand adjourned for the term and all cases continued to the next term of said court.

SECTION 12. The provisions of law applicable to change of venue in the circuit courts of this state shall be applicable to said county court, except that when the venue of any action shall be so changed it shall be changed to the circuit court of Polk county; and such change of venue shall not prevent the granting by said circuit court of a further change of venue as provided in section 261.04 of the statutes, provided, however, that nothing herein contained shall be construed as abrogating the right to a change of venue provided for by section 261.08 of said statutes, and when such change of venue shall be made, it shall be made by said county court direct to the proper county for the trial of the action and provided further that section 261.08 of said statutes so far as applicable shall apply to said county court, and that the judge thereof shall have the right to call upon the circuit judge or any county judge of a county court having civil and criminal jurisdiction to attend, hold court and try such action, and while so doing he shall have the same powers as the judge of said county court. If any person charged upon indictment or information with a criminal offense shall have procured a change of venue to the circuit court of Polk county, said county court shall commit or hold the party to bail to appear at the next term of the circuit court and the clerk of said county court shall transmit all papers and a copy of the records and proceedings in said case, properly certified to be such under the seal of said court, to the said circuit which shall then have full jurisdiction of the action; all recognizances previously given in such cases and returned to said county court may be enforced in said circuit court as fully as if they had been originally returned thereto. In like manner may all such cases which might originally have been

brought in said county court or appealed thereto, where a change of venue is allowed or directed by the circuit court on the grounds of prejudice of the judge thereof, be removed to said county court; provided, however, that nothing herein contained shall be construed as abrogating the power conferred upon the circuit court by section 261.08 of the statutes.

SECTION 13. The judge of the county court shall be disqualified to try and determine any case in which he shall have acted as counsel for either party, and he shall transmit all such cases to the circuit court of said county; the judge of said county court may transmit to the circuit court any other action or proceeding before him, if in his discretion he deem it expedient; and the circuit court shall thereupon proceed to try and determine the same in the same manner as if said action or proceeding had originated in the circuit court. The circuit judge may transmit to said county court any action or proceeding, pending in said circuit court, which might originally have been commenced in said county court, if in his discretion he deem it expedient, and said county court shall thereupon proceed to try and determine the same in the same manner as if said action or proceeding had originated in said county court.

SECTION 14. The judge of said county court, while holding such office, shall be in no manner engaged nor act as attorney or counsel in any action, cause or proceeding in or which might be brought in either the circuit or county court of Polk county nor give advice or opinion therein; and the judge of said court shall not give advice to parties litigant in any action or proceeding pending before such judge nor in any matter which might be brought before him for decision, nor draft or prepare any papers or other proceedings relating to any such matter or action, except when expressly authorized by law, upon penalty for any violation hereof of removal from office.

SECTION 15. Whenever it shall appear to the satisfaction of the judge that a jury panel should be drawn for any term of said court, he may by order direct the clerk, at a time to be named in such order not less than six days before such term, to draw from the list of persons provided for jury service in the circuit court of said county, in the presence of the judge, twenty-four jurors for said term. If the name of any person known to the clerk or judge to be disqualified or no longer liable to jury

duty in said county be drawn, such name shall be thrown out and the name of another juror to take his place be drawn and the list of jurors so selected shall forthwith be filed in the office of said clerk. No jurors shall be summoned to attend upon any term of said court unless it shall appear to the satisfaction of the judge that a jury panel is necessary. All provisions of law and rules of practice relating to the selection, qualifications, duties and compensation of jurors in the circuit court shall be applicable to said county court, except as otherwise provided herein.

SECTION 16. After issue is joined in any civil action or proceeding, any party may upon five days' notice to the other party or parties, apply to the said court or the judge thereof to set down such case on the calendar of the court for trial on a particular day and the court or judge shall, if it be reasonably possible, fix a definite time for such trial, which shall not be less than five days from the time of hearing such application, unless for cause the judge shall otherwise order. At the time any action or proceeding is so set down for trial, if it be one triable by a jury, the court shall require the parties to determine and elect whether they wish a trial by jury, and if a jury is elected, of what number; and if a trial by jury is demanded by either party to the action and the said parties do not agree on a jury of less number, the court may at that time or at any time afterward direct that a jury be selected, as herein provided in such case, and issue a venire therefor returnable at the time fixed for the trial of the action; provided, that the issues of fact joined upon any complaint, indictment or information may be tried by the court without a jury or by a jury of less than twelve men whenever the accused in writing or by statement in open court entered in the minutes consents thereto. In any civil action or proceeding, properly triable by a jury, in which a jury has not been demanded or has been expressly waived by the parties, the court may upon the request of the parties or upon his own motion, by order entered in the minutes of the case, call in two advisory triers, to be named in such order, who shall sit with the court upon the trial of the action or proceeding and confer and advise with the judge as to the determination of the issues of fact. Before entering upon their duties said advisory triers shall be sworn to well and truly perform their duties as such advisory

triers, and they shall each be paid for their services by Polk county, a sum not to exceed ten dollars per day upon the certificates of the county judge.

SECTION 17. In any civil or criminal action or proceeding in which a jury trial is demanded or ordered, the parties shall strike from the panel of jurors drawn for such term, the jury for such action. The district attorney or plaintiff shall strike first and each party shall strike in turn until the required number of jurors is left. When either party declines to strike in his turn, the strike shall be made by the clerk. When the persons so selected for jury service at any term have been determined, a venire therefor returnable at such time as the judge may direct shall be issued by the clerk to the sheriff of the county. If any of the jurors named in such venire shall not be found or shall fail to appear or be excused by the court, or being in attendance for the trial of any particular action or proceeding shall upon examination be found to be disqualified to serve on said jury, or shall be challenged peremptorily by either party, the court may direct the sheriff to summon a sufficient number of talesmen from among the bystanders or from the body of the county to supply the deficiency; provided, that not more than four such talesmen shall be selected from the residents of any one town, city or village, except by consent of the parties. Upon examination upon voir dire under this section, each party shall be entitled to two peremptory challenges.

SECTION 18. If a jury be required to make an assessment of damages in any case, the same shall be selected from the panel of jurors selected for the term, or the court may direct the same to be had and taken by any jury summoned in any other case or may direct the clerk to summon a special jury for that purpose to be composed of persons qualified to serve as jurors in said court, and unless objections are made, such assessment of damages may be made by the court or judge thereof, without the intervention of a jury.

SECTION 19. All costs, fees, and disbursements shall be taxed and allowed the prevailing party in the same manner and to like amount as they are taxed and allowed in the circuit court, except as herein provided.

SECTION 20. The county judge of Polk county, until the end of the current term and until otherwise fixed by the county

board, for performing the duties of his office and the duties of the office of judge of the juvenile court for said county, when performed by him, shall receive a salary of three thousand six hundred dollars per annum, to be paid out of the county treasury in equal monthly installments at the end of each month.

SECTION 21. The clerk of the circuit court of said county shall ex officio be the clerk of said county court and shall have the care and custody of all books and papers belonging to said county court except those that appertain to the probate jurisdiction thereof and shall perform the duties of the clerk of said county court, so far as it shall be requisite and necessary to discharge the necessary duties as clerk of said county court, and all other duties necessary to carry into effect the provisions of this act; and the said clerk of the county court shall keep all necessary records of proceedings and judgments had in said county court, in the manner provided in the circuit court as otherwise in this act provided. All orders, judgments and decrees made and entered in this court shall be recorded and judgments and decrees docketed by the clerk in the same manner and in the same books that orders, judgments and decrees of the circuit court for said county are recorded and docketed, and with like effect. Notation shall be added in such dockets and records showing that such orders, judgments or decrees were made in said county court. In each civil action commenced in or appealed to said county court, there shall be paid a state tax of one dollar and an advance clerk's fee of two dollars at the same time and in the same manner as now provided for the payment of state tax and advance clerk's fees for actions commenced in or appealed to the circuit court.

SECTION 22. The deputy clerks authorized by law to be appointed by the clerk of the circuit court of said county shall also be the deputy clerks of said county court and may aid said clerk in the discharge of his duties as clerk of said county court, and in the absence of the clerk from his office or from the court may perform all his duties and in case of a vacancy by resignation, death, removal or other cause, the deputy appointed shall perform all such duties as clerk of said county court until such vacancy be filled.

SECTION 23. The sheriff of said county in person or by his undersheriff or one of his deputies shall attend such court when actually in session for the transaction of court business, other

than probate business, and the court shall designate the number of officers that shall be present when such court is in actual session as aforesaid and such officers shall be entitled to receive the same compensation and such compensation shall be payable in like manner as is or may be provided by law for like service in the circuit court.

SECTION 24. The fees of the clerk, witnesses, jurors and officers shall be the same as are allowed by law to the clerk, witnesses, jurors and officers in the circuit court of Polk county.

SECTION 25. The judge of said county court may, from time to time, employ a phonographic reporter for said court, who shall take and subscribe the oath of office provided in the constitution. Such phonographic reporter shall be furnished with all necessary stationery, and shall attend when required by said judge and report the proceedings of trials had in said court and perform such other duties as said judge shall require. Said judge shall fix the compensation of such reporter, not to exceed six dollars for each day's attendance, which shall be in full compensation for services and for making such transcripts from shorthand notes as may be required by said judge. Said reporter shall furnish parties to the action or their attorneys requiring them, like transcripts at a price not to exceed ten cents per folio for transcripts and two and one-half cents per folio for carbon copies thereof. The per diem compensation of said reporter shall be paid out of the treasury of Polk county upon the certificate of the judge.

SECTION 26. Court commissioners for the circuit court of Polk county shall have the same powers and be subject to the same duties in respect to actions and proceedings in said county court as in actions and proceedings in said circuit court.

SECTION 27. The seal of the county court of Polk county shall continue to be used as the seal of said court.

SECTION 28. The county of Polk shall provide all books, blanks and stationery for keeping the records and proceedings of said county court made necessary by this act. The county court of said county shall be held in the county court room or in the circuit court room when the circuit court is not in session, at the county seat of said county, except as herein provided, and all books, records and proceedings pertaining to said county court shall be kept in the office of the clerk of said county court or in the office of the county judge for Polk county.

SECTION 29. All fines, and all costs collected by the clerk in any civil action and in all criminal prosecutions and proceedings under the general statutes of this state tried or determined by the county court, which if tried or determined by the circuit court or circuit judge would be paid over to the county treasurer, shall be accounted for and paid over quarterly by the clerk of said county court unto the county treasurer of Polk county.

SECTION 30. The general provisions of the statutes of Wisconsin, and all the general laws which may at any time be in force relative to circuit courts and actions and proceedings therein, in civil and criminal cases, shall also apply to said county court, unless inapplicable, and except as otherwise provided in this act; and the rules of practice prescribed by the justices of the supreme court for circuit courts shall, unless inapplicable, be in force for said county court, and the judge of said county court shall have the power to punish for contempt in the same manner that the judges of circuit courts are or may be authorized by law to punish for contempts; and the said county court shall have the power to make and enforce such other rules of practice as may be necessary.

SECTION 31. This act shall take effect upon passage and publication.

Approved June 13, 1927.

No. 459, A.]

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CHAPTER 220.

AN ACT to amend section 156.02 of the statutes, relating to requirements for an embalmer's license.

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

SECTION 1. Section 156.02 of the statutes is amended to read: (156.02) Application shall be in writing, on blanks prescribed by the board, accompanied by five dollars, and proof that the applicant is of good moral character, twenty-one years of age or over, has an education equivalent to graduation from the eighth grade, and has had either at least two years' practical experience in embalming and disinfecting under a licensed embalmer, or at