

No. 172, S.]

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CHAPTER 295.

AN ACT amending chapter 231 of the laws of 1895 and relating to the jurisdiction, procedure, powers, and the judge of the municipal court for Lincoln county.

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

Name of court changed. SECTION 1. That chapter 231 of the laws of 1895 be, and the same hereby is, amended by changing the name of the "municipal court of Lincoln county" to the name of "*superior court of Lincoln county,*" and wherever in said act the name "municipal" appears, there shall be and hereby is substituted therefor the term "*superior,*" and wherever in any other existing statutes, said court is referred to as the municipal court of Lincoln county, such reference shall hereafter be deemed and construed to be to the superior court of Lincoln county.

Additional jurisdiction conferred; powers. SECTION 2. There is hereby conferred on the superior court of Lincoln county, in addition to the jurisdiction conferred by chapter 231 of the laws of 1895, jurisdiction equal to and concurrent with the circuit court of Lincoln county in all civil actions and proceedings at law and in equity; provided that said court shall not have jurisdiction of any civil action or proceeding at law or in equity where the amount of debt, damages, penalty or forfeiture sought to be recovered shall exceed \$25,000.00, exclusive of interest and costs, and in the exercise thereof said court shall have power to issue all writs, process, and commissions provided by law, or which may be necessary to the due execution of the powers with which it is vested. And the said court shall have all the powers, according to the usages of law and equity, necessary to the full and complete jurisdiction of the causes and the parties and the full and complete administration of justice and to carry into effect its judgments, orders and other determinations, subject to re-examination by the supreme court as provided by law. The said court in term time, and the judge thereof in vacation, shall have power to award

all writs, processes and commissions through the state, returnable in the proper county.

Laws governing circuit court to apply. SECTION 3. All the provisions of law relating to the circuit court and the judges thereof and to the trial of civil actions and proceedings therein shall apply to the superior court and judge thereof in the exercise of the additional jurisdiction conferred by this act, so far as applicable, except as otherwise herein provided and whenever the term "circuit court," "circuit judge," "court," "presiding judge of the circuit court," "judge of the circuit court," "presiding judge" or "judge" shall appear in any statute of the state, the same shall be deemed to apply to the superior court and superior judge in any section within the jurisdiction of said superior court, except as herein otherwise provided.

Court, where held; to be court of record; seal. SECTION 4. Such court shall be held in the city of Merrill, Wisconsin, and when exercising the additional jurisdiction conferred by this act, it shall be held in the court house in said city. Such court while exercising the additional jurisdiction conferred by this act shall be a court of record with a seal; said seal to be designed and procured by the superior judge at the expense of Lincoln county.

Qualifications and liabilities of judge; term; oath; vacancy, how filled. SECTION 5. Said superior judge shall have the qualifications and be subject to the liabilities of the circuit judges. The present municipal judge of Lincoln county shall continue in office as superior judge under this act, until the expiration of the time to which he was elected. His successor shall be elected by the qualified electors of Lincoln county at the spring election in the year 1907, and once every four years thereafter and his terms shall commence on the first Monday of May next following his election. He shall hold his office until his successor is elected and qualified. Before entering upon the duties of such office he shall subscribe and file in the office of the clerk of the circuit court of Lincoln county the constitutional oath of office required of circuit judges. Vacancies in such office shall be filled in the same manner as vacancies are filled in the office of the county judge of Lincoln county.

Salary of judge. SECTION 6. The superior judge shall receive a salary for his services performed under this act, to be fixed by the county board of supervisors of Lincoln county at its next regular meeting, and thereafter at the annual meeting of the county board in November preceding the election of the superior judge; provided that until the county board shall fix said judge's salary, he shall receive the sum of \$1,200 per annum, payable monthly out of the county treasury.

Who may hold court in absence of judge; powers of court commissioners. SECTION 7. Any presiding judge of a court of record of this state, other than county judges, may hold court as the judge of said superior court and may be called to hold such court in case of the absence, sickness, disqualification, or disability of the said superior judge, or upon his request, and while so doing, said circuit judge shall have the same powers as if elected the judge of said court. Any judge so called in shall be paid his expenses in the same manner as is now provided for the payment of expenses of a circuit judge similarly called in. Circuit court commissioners shall have the same powers relating to actions in the superior court as they have relating to actions in the circuit court.

Clerk; oath, bonds, powers and duties. SECTION 8. The clerk of the circuit court for Lincoln county and his deputy shall be clerk and deputy, respectively, of such superior court. Such clerk, in addition to his oath and bond as clerk of the circuit court, shall file an additional oath of office as the clerk of said superior court, and shall execute and file with the county clerk a bond with at least two sureties to be approved by such clerk in such sum as such superior judge shall designate, conditioned that he will pay over to the proper persons all fines and penalties, suit taxes and other moneys in his hands as required by law and the order of said court, and will faithfully perform the duties of said office as required by law. Said clerk shall have all the power and perform all the duties with reference to said superior court under this act in the same manner as the clerk of the circuit court has and does for that court, except as otherwise herein provided.

Docketing judgments. SECTION 9. He shall docket all judgments rendered in said court under this act in the same manner as circuit court judgments are docketed and in the same judgment dockets, and the judgments when so docketed shall be

liens and enforced throughout the state, in the same manner as judgments of the circuit court.

Appeal; appellate and supervisory jurisdiction. SECTION 10. No appeal to the circuit court in any cause or proceeding tried or determined in said superior court, in accordance with circuit court procedure, shall be made or allowed, but all orders or judgments made or rendered therein may be removed to and reviewed by the supreme court in the same manner that orders and judgments of the circuit court may be. Said superior court shall have the same appellate and supervisory jurisdiction as the circuit court of Lincoln county and co-ordinate with said circuit court except in respect to actions and proceedings in said superior court begun and prosecuted therein according to justice court procedure and in criminal actions, and except that no appeal shall be taken to the superior court without consent of the successful party in the lower court, such successful party shall within three days after the entry of judgment in his favor in the lower court file in said lower court his election of the court to which the appeal shall run if any appeal be made and in case of neglect so to do shall be deemed to have consented to allow the appellant to elect to which court the appeal shall run. And in any civil action pending in any justice court, county or municipal court in Lincoln county, if the defendant shall at the time and manner provided in sections 3619 and 3620 Wisconsin statutes, make an affidavit that the title of land will come in question, and give a bond of the amount and form there provided, said action shall, upon the election of all the parties to the action to be forthwith expressed be removed to the superior court, otherwise to the circuit court and all the provisions of sections 3621 and 3622 shall apply to the superior court the same as to the circuit court and the case shall if removed thereto proceed in the superior court according to the same procedure as if said case was removed on such issue to the circuit court.

Change of venue. SECTION 11. In any action in the superior court, of which a circuit court would have jurisdiction, any change of venue on grounds other than the prejudice or other disqualification of the judge may be made to any circuit to which the same might be sent, if such action were pending in the circuit court for Lincoln county and the change of venue made by that court. Any change of venue on account of prejudice or other disqualification of the judge shall be made either to the circuit court of Lincoln county or of any county of an adjoining circuit as the court shall order.

JURIES.

Jury commissioners; list of jurors. SECTION 12. The jury commissioners appointed by the circuit judge shall also act as jury commissioners of the superior court. As soon as may be after the passage and publication of this act, the superior judge shall notify the jury commissioners of the county to certify two lists of 100 names each of citizens qualified to act as jurors in the circuit court; one of said lists to be selected from citizens of the city of Merrill and the other list to be selected from citizens of the county at large and no name shall be placed in both boxes at the same time. When either list becomes reduced to 24 names, the superior judge shall notify said jury commissioners to replenish the list, and the jury commissioners shall certify, as before, sufficient names to bring the total up to 100. The names of each juror certified shall be written on a slip of paper and sealed in an envelope and deposited in boxes to be provided for that purpose by the clerk, one of said boxes to contain the list of city jurors and the other box to contain the list of jurors selected from the county at large; and said envelopes shall not be opened by any person or the names of the jurors revealed by the commissioners until drawn out of the box as herein provided.

Demand for jury; notice; drawing jury. SECTION 13. A jury may be demanded by either party not less than eight days before the day set for the trial of the case, by service of a written notice on the attorney for the opposite party, which notice shall fix the time, not less than one nor more than three days before the day set for trial, for drawing a jury as hereinafter provided; and if not so demanded, the jury shall be deemed to have been waived. If objection be made at the time fixed for drawing a jury that the issues are not triable by jury the court shall forthwith determine whether a jury shall be drawn. Whenever a jury is demanded by either party, in any case where a jury might be demanded in the circuit court, the clerk shall, at the fixed time in the notice and in the presence of the parties or their attorneys, draw six names from the box containing a list of jurors made up from the city of Merrill, and from the list of names so drawn, each party shall be entitled to strike three names beginning with the party demanding the jury and proceeding alternately until each party has struck, or waived the striking of, three names. Provided that as fast as a name shall be struck from the list, the clerk shall draw an additional

name from the box until the panel is complete. The clerk shall issue one venire containing the six names remaining on the list, returnable at the time set for the trial of the case, which venire shall be delivered to the sheriff and the sheriff shall proceed to summon the jury.

Manner of drawing jury in certain cases; pay of jurors and officers. SECTION 14. In case the city of Merrill is a party, and in any case when demanded by either party, the clerk shall draw the jury from the box containing the list of jurors selected from the county at large, and such jury shall consist of twelve instead of six jurymen and the jury shall be otherwise selected and summoned as above provided. In case a juror cannot be found, or is excused, the clerk shall draw additional jurors from the box containing names of jurors from the county at large unless the parties agree to try the case with such additional jurors drawn from the box containing names of jurors from the city of Merrill or with such jurors as remain. When the jury has been secured, the clerk shall return to the jury box the names of all jurors struck, or that failed to serve, and the names of those jurors that serve, or are found exempt from jury duty, shall not be returned to said jury box, until again certified by said jury commissioners. Jurors and officers shall receive the same pay as in the circuit court.

Expenses, how paid. SECTION 15. All compensation of jurors, court reporters and officers and other court expenses shall be paid on the order of the superior judge out of the treasury of Lincoln county, according to the practice in circuit court.

When court shall be open; notice of trial; continuances and adjournments. SECTION 16. Such court shall be open for business on all secular days, except as the judge thereof may otherwise order, from the commencement of any regular term until the next regular term and no adjournment from day to day shall be necessary to the validity of any proceeding in said court under this act; but no per diem shall be allowed under this act to any officer for attending said court, except on days when said court is actually in session, transacting business as a court of record. Any action proceeding according to circuit court procedure and any appeal pending in said court may be brought on for trial at any time by consent of parties, or after issue is joined, on fifteen days' notice in writing by either party, specifying the date for trial, which date, however, shall first be approved by the judge. Continuances or adjournments may be

granted for cause, or by stipulation of the parties on the same terms as in circuit court, and shall be to a day certain unless the parties stipulate otherwise, and when set for trial on a day certain, no additional notice of trial need be given. Applications for continuance may be brought on for hearing by order to show cause at any time after the cause is noticed for trial.

Regular term. SECTION 17. There shall be held at least one regular term of said court each year; and the time of holding the same shall be fixed by the judge as soon after the passage and publication of this act as practicable, and the term so fixed shall, continue to the next regular term unless adjourned by the judge.

Construction of act. SECTION 18. Nothing contained in this act shall be construed as enlarging or restricting the powers of the court or judge when or while exercising the jurisdiction and powers conferred by chapter 231 of the laws of 1895, nor as changing the procedure or practice of said court or judge in any action or proceeding of which said court or judge had jurisdiction before the passage of this act; but such action and proceedings in said court or before said judge shall be had, tried or conducted under the provisions of law existing and applicable before the passage of this act.

SECTION 19. This act shall take effect and be in force from and after its passage and publication.

Approved June 3, 1905.